

CONTRACT AWARD  
RFP-38 Rev. 4/26/12  
Prev. Rev. 4/08

**STATE OF CONNECTICUT**  
**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**Paul Greco**  
Contract Specialist

**PROCUREMENT DIVISION**  
**165 Capitol Avenue, 5<sup>th</sup> Floor South**  
**HARTFORD, CT 06106-1659**

**(860)713-5189**  
Telephone Number

CONTRACT AWARD NO.:  
12PSX0097

Contract Award Date:  
November 5, 2012

RFP Due Date:  
30 April 2012

**CONTRACT AWARD**

**IMPORTANT: THIS IS NOT A PURCHASE ORDER. DO NOT PRODUCE OR SHIP WITHOUT AN AGENCY PURCHASE ORDER.**

DESCRIPTION: **Environmental Remediation services for the Connecticut Department of Energy and Environmental Protection and CT Towns and Municipalities.**

**FOR: Ct Department of energy and Environmental Protection**

**TERM OF CONTRACT / DELIVERY DATE REQUIRED:**  
**November 5, 2012 through October 31, 2017**

**AGENCY REQUISITION NUMBER: 29425**

<b>IN STATE (NON-SB) CONTRACT VALUE</b>	<b>DAS CERTIFIED SMALL BUSINESS CONTRACT VALUE</b>	<b>OUT OF STATE CONTRACT VALUE</b>	<b>TOTAL CONTRACT AWARD VALUE</b>
			Est. Value \$4,000,000.00

**NOTICE TO CONTRACTORS:** This notice is not an order to ship. Purchase Orders against contracts will be furnished by the using agency or agencies on whose behalf the contract is made.

**INVOICE SHALL BE RENDERED DIRECT TO THE ORDERING AGENCY.**

**NOTE:** Dollar amounts listed next to each contractor are possible award amounts, however, they do not reflect any expected purchase amounts (actual or implied). They are for CHRO use only.

**NOTICE TO AGENCIES:** A complete explanatory report shall be furnished promptly to the Procurement Manager concerning items delivered and/or services rendered on orders placed against awards listed herein which are found not to comply with the specifications or which are otherwise unsatisfactory from the agency's viewpoint, as well as failure of the contractor to deliver within a reasonable period of time specified. Please issue orders and process invoices promptly.

**CASH DISCOUNTS:** Cash discounts, if any, shall be given SPECIAL ATTENTION, but such cash discount shall not be taken unless payment is made within the discount period.

**PRICE BASIS:** Unless otherwise noted, prices include delivery and transportation charges fully prepaid f.o.b. agency. No extra charge is to be made for packing or packages.

**See following pages for Awarded Contractors. Additional Contract Awards are pending.**

Note:

**Refer to Exhibit A, page 17 for instructions for selecting awarded Contractors at time of service requirements.**

**Refer to Exhibit A, page 4 paragraph k) for insurance submittal requirements prior to accepting services.**

**APPROVED** \_\_\_\_\_

**Carol Wilson**  
Procurement Director  
(Original Signature on Document in Procurement Files)

**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **Fuss & O'Neill, Inc.**

Company Address: **146 Hartford Road, Manchester, CT 06040**

Tel. No.: **860-646-2469**

Fax No.: **860-533-5133**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **John Hankins**

Contact Person Address: **146 Hartford Road, Manchester, CT 06040**

Company E-mail Address and/or Company Web Site: [jhankins@fando.com](mailto:jhankins@fando.com) [www.fando.com](http://www.fando.com)

Remittance Address:

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **Groundwater & Environmental Services, Inc.**

Company Address: **440 Creamery Way, Suite 500, Exton, PA 19341**

Tel. No.: **800-220-6119**

Fax No.: **860-688-9278**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **Doug Liddell**

Contact Person Address: **425B Hayden Station Road, Windsor, CT 06095**

Company E-mail Address and/or Company Web Site: [dliddell@gesonline.com](mailto:dliddell@gesonline.com) [www.gesonline.com](http://www.gesonline.com)

Remittance Address: **440 Creamery Way, Suite 500, Exton, PA 19341**

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **GZA GeoEnvironmental, Inc.**

Company Address: **655 Winding Brook Drive, Suite 402, Glastonbury, CT 06033**

Tel. No.: **860-286-8900**

Fax No.: **860-652-8590**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **Kathleen Cyr**

Contact Person Address: **655 Winding Brook Drive, Glastonbury, CT 06033**

Company E-mail Address and/or Company Web Site: [Kathleen.cyr@gza.com](mailto:Kathleen.cyr@gza.com) [www.gza.com](http://www.gza.com)

Remittance Address: **P.O. Box 711810, Cincinnati, OH 45271-1810**

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **Haley & Aldrich, Inc.**

Company Address: **100 Corporate Place, Suite 105, Rocky Hill, CT 06067-1803**

Tel. No.: **860-282-9400**

Fax No.: **860-721-0612**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **Richard P. Standish**

Contact Person Address: **100 Corporate Place, Suite 105, Rocky Hill, CT 06067-1803**

Company E-mail Address and/or Company Web Site: [Standish@haleyaldrich.com](mailto:Standish@haleyaldrich.com) [www.haleyaldrich.com](http://www.haleyaldrich.com)

Remittance Address: **100 Corporate Place, Suite 105, Rocky Hill, CT 06067-1803**

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **Leggette, Brashears & Graham, Inc.**

Company Address: **4 Research Drive, Suite 301, Shelton, CT 06484**

Tel. No.: **203-929-8555**

Fax No.: **203-926-9140**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **William K. Beckman**

Contact Person Address: **4 Research Drive, Suite 301, Shelton, CT 06484**

Company E-mail Address and/or Company Web Site: [wbeckman@lbgct.com](mailto:wbeckman@lbgct.com) [www.lbgweb.com](http://www.lbgweb.com)

Remittance Address: **4 Research Drive, Suite 301, Shelton, CT 06484**

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **Loureiro Engineering Associates, Inc.**

Company Address: **100 Northwest Drive, Plainville, CT 06062**

Tel. No.: **860-747-6181**

Fax No.: **860-747-8822**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **Brian A. Cutler**

Contact Person Address: **100 Northwest Drive, Plainville, CT 06062**

Company E-mail Address and/or Company Web Site: [bacutler@loureiro.com](mailto:bacutler@loureiro.com) [www.loureiro.com](http://www.loureiro.com)

Remittance Address: **100 Northwest Drive, Plainville, CT 06062**

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **Tighe & Bond, Inc.**

Company Address: **53 Southampton Road, Westfield, MA 01085**

Tel. No.: **860-704-4761**

Fax No.: **860-704-4775**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **James T. Olsen, LEP**

Contact Person Address: **213 Court Street, Suite 900, Middletown, CT 06457**

Company E-mail Address and/or Company Web Site: [tccouture@tighebond.com](mailto:tccouture@tighebond.com) [www.tighebond.com](http://www.tighebond.com)

Remittance Address: **53 Southampton Road, Westfield, MA 01085**

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**

REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)

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Company Name: **TRC Environmental Corporation**

Company Address: **21 Griffin Road North, Windsor, CT 06095**

Tel. No.: **860-298-9692**

Fax No.: **860-298-6399**

Contract Value: **\$300,000.00 Est.**

Delivery: **As Required**

Contact Person: **Carl N. Stopper**

Contact Person Address: **21 Griffin Road North, Windsor, CT 06095**

Company E-mail Address and/or Company Web Site: [cstopper@trcsolutions.com](mailto:cstopper@trcsolutions.com) [www.trcsolutions.com](http://www.trcsolutions.com)

Remittance Address: **P.O. Box 8500-53878, Philadelphia, PA 19178-3878**

Agrees to Supply Political Sub-Divisions: **Yes**

Terms: **Net 45 Days**

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**CONTRACTOR INFORMATION:**REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)Company Name: **The Louis Berger Group, Inc.**Company Address: **501 Kings Highway East, Fairfield, CT 06825**Tel. No.: **203-869-0074 Ext. 1383**Fax No.: **973-267-6468**Contract Value: **\$300,000.00 Est.**Contact Person: **Gul Khan, PE- Senior Vice President**Delivery: **As Required**Contact Person Address: **501 Kings Highway East, Fairfield, CT 06825**Company E-mail Address and/or Company Web Site: [gkahn@louisberger.com](mailto:gkahn@louisberger.com) [www.louisberger.com](http://www.louisberger.com)Remittance Address: **501 Kings Highway East, Fairfield, CT 06825**Agrees to Supply Political Sub-Divisions: **Yes**Terms: **Net 45 Days****CONTRACTOR INFORMATION:**REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)Company Name: **Weston & Sampson Engineers, Inc.**Company Address: **723 Dividend Road, Rocky Hill, CT 06067**Tel. No.: **860-513-1473**Fax No.: **860-513-1483**Contract Value: **\$300,000.00 Est.**Contact Person: **Christopher B. Wester**Delivery: **As Required**Contact Person Address: **273 Dividend Road, Rocky Hill, CT 06067**Company E-mail Address and/or Company Web Site: [wester@wseinc.com](mailto:wester@wseinc.com) [www.westonandsampson.com](http://www.westonandsampson.com)Remittance Address: **273 Dividend Road, Rocky Hill, CT 06067**Agrees to Supply Political Sub-Divisions: **Yes**Terms: **Net 45 Days****CONTRACTOR INFORMATION:**REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)Company Name: **Diversified Technology Consultants, Inc.**Company Address: **2321 Whitney Avenue, Suite 301, Hamden, CT 06518**Tel. No.: **203-239-4200 Ext. 104**Fax No.: **203-234-7376**Contract Value: **\$300,000.00 Est.**Contact Person: **A. Graham Curtis, PE, LEED AP**Delivery: **As Required**Contact Person Address: **2321 Whitney Avenue, Suite 301, Hamden, CT 06518**Company E-mail Address and/or Company Web Site: [dte@teamdte.com](mailto:dtc@teamdte.com) [www.teamdte.com](http://www.teamdte.com)Remittance Address: **2321 Whitney Avenue, Suite 301, Hamden, CT 06518**Certification Type (SBE, MBE or None): **MBE**Agrees to Supply Political Sub-Divisions: **Yes**Terms: **Net 30 Days****CONTRACTOR INFORMATION:**REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)Company Name: **Arcadis U.S., Inc.**Company Address: **213 Court Street, Suite 700, Middletown, CT 06457**Tel. No.: **860-503-1440**Fax No.: **860-503-1520**Contract Value: **\$300,000.00 Est.**Contact Person: **Mark Barmasse, PE, LEP, BCEE**Delivery: **As Required**Contact Person Address: **213 Court Street, Suite 700, Middletown, CT 06457**Company E-mail Address and/or Company Web Site: [mark.barmasse@arcadis-us.com](mailto:mark.barmasse@arcadis-us.com) [www.arcadis-us.com](http://www.arcadis-us.com)Remittance Address: **Malcolm Pirnie, Inc., 23444 Network Place, Chicago, IL 60673-1234**Terms: **Net 45 Days**Cash Discount: **% Days**Agrees to Supply Political Sub-Divisions: **Yes****CONTRACTOR INFORMATION:**REFER TO THE CONTRACT ON THE DAS PROCUREMENT WEB PAGE FOR THE MOST CURRENT CONTRACTOR INFORMATION. (<http://das.ct.gov/mp1.aspx?page=8>)Company Name: **AECOM Technical Services, Inc.**Company Address: **555 South Flower Street, Suite 3700, Los Angeles, CA 90071-2300**Tel. No.: **860-263-5808**Fax No.: **860-263-5777**Contract Value: **\$300,000.00 Est.**Contact Person: **John Albrecht**Delivery: **As Required**Contact Person Address: **500 Enterprise Drive, Suite 1A, Rocky Hill, CT 06067**Company E-mail Address and/or Company Web Site: [john.albrecht@aecom.com](mailto:john.albrecht@aecom.com) [www.aecom.com](http://www.aecom.com)Remittance Address: **1178 Paysphere Circle, Chicago, IL 60674**Certification Type (SBE, MBE or None): **None**Agrees to Supply Political Sub-Divisions: **Yes**Terms: **Net 45 Days**

# **Contract Award 12PSX0097 Exhibit A**

CT Department of Administrative Services on behalf of the CT Department of Energy and Environmental Protection



## Section I, Overview / Definitions / General Terms

### I. Overview

- a) This contract provides services for the Connecticut Department of Energy and Environmental Protection (DEEP) from Contractors specializing in the discovery, investigation, evaluation, mitigation, and remediation of contaminated media, surface water, groundwater, land, waters of the State including offshore or coastal waters or other contamination resulting from the discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum, chemical liquids, solid, liquid or gaseous products, waste oil, or hazardous wastes. In addition, Contractors may be expected to provide expert advice and/or testimony in administrative, arbitration or judicial proceedings regarding all aspects of any work performed under this contract.

### II. Definitions

As used in this Exhibit A-, unless specified otherwise, the following terms shall have the following meanings:

- a) The terms “chemical liquids”, “hazardous waste”, “oil or petroleum”, “solid, liquid or gaseous products” and “waste oil” shall be defined as those terms are defined in Connecticut General Statutes §22a-448, including any amendment thereto.
- b) “Remediation-” shall be defined as the term is defined in the Regulations of Connecticut State Agencies section §22a-133k-1 et seq., including any amendment thereto.
- c) “Day” shall mean a calendar day.
- d) “Week” shall mean any consecutive seven (7) day period.
- e) “Month” shall mean thirty (30) consecutive days.
- f) “Environmental law” shall mean Title 22a of the Connecticut General Statutes, including all chapters contained therein, the Table of Federal Laws provided on Table 1 and all regulations promulgated under the aforementioned State and Federal statutes, including any amendment thereto.
- g) “Occupational Safety and Health Law” shall mean Chapter 571 of Title 31 of the Connecticut General Statutes, the Federal Occupational Safety and Health Act of 1970, and all regulations promulgated under the aforementioned State and Federal statutes, including any amendment thereto.
- h) “Phase I Environmental Site Assessment” shall mean an investigation of the existing and past uses of a site for the purpose of identifying all potential areas of concern at a site at which substances may have been released to the environment.
- i) “Phase II Environmental Site Assessment” shall mean an investigation of all potential areas of concern identified in the Phase I Environmental Site Assessment for the purpose of determining if a release of any substance has occurred.
- j) “Phase III Environmental Site Assessment” shall mean an investigation that fully defines the nature and extent of pollution associated with releases confirmed during the Phase II Environmental Site Assessment or otherwise known to be present.
- k) “Person” shall mean employees, agents or Sub Contractors of a Contractor.

- l) “Substance” shall mean an element, compound or material which, when added to air, water, soil or sediment, may alter the physical, chemical, biological or other characteristics of such air, water, soil or sediment.
- m) “Release” shall mean any discharge, spillage, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying, or disposal of a substance.
- n) “Ecological Risk Assessment” shall mean qualitative and quantitative evaluation of the potential for harm to occur to ecological receptors as a result of exposure to one or more stressors.
- o) “Human Health Risk Assessment” shall mean qualitative and quantitative evaluation of the potential for harm to occur to people as a result of exposure to one or more stressors.

### III. General Terms

- a) **Mandatory Extension to State Entities:** When a Town, Municipality, Political Sub-Division, School, and/or Not-For-Profit Organization utilizes this contract all references to the “State” are hereby replaced with the Name of the Using Sub-Division, School, or the name of the Not-For-Profit Organization.
- b) **Stability of Prices:** Prices shall remain fixed for the initial 5 five – year term of the Contract.
- c) **Sub Contractors:** DAS shall approve any and all Sub Contractors utilized by the Contractor prior to any such Sub Contractor commencing any work. Contractors acknowledge by the act of submitting a proposal that any work provided under the contract is work conducted on behalf of the State and that the Commissioner of DAS or her designee may communicate directly with any Sub Contractor as the State deems to be necessary or appropriate. It is also understood that the successful proposer shall be responsible for all payment of fees charged by the Sub Contractor(s). A performance evaluation of any Sub Contractor shall be provided promptly by the successful proposer to DAS upon request. The Contractor must provide the majority of services described in the specifications.
- d) **Prevailing Wage Laws:** Where applicable, Contractors must adhere to all applicable Federal and State of CT Department of Labor Wage Laws as referenced within Conn.Gen. Stat. Section 31-53a (g).
- e) **Security:** Contractor must adhere to established security and/or property entrance policies and procedures established for each requesting Client agency. It is the responsibility of each Contractor to understand and adhere to those policies and procedures prior to any attempt to enter the premises.

## Section II, Technical Specifications Overview

### I.

- a) **Safety Precautions and Environmental Compliance:** The Contractor shall be responsible for taking all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and municipal regulations and building codes to prevent accidents or injuries to persons on, about, or adjacent to the premises where the work is being performed. The work area shall be kept tidy, clean, and free from any unnecessary rubbish.

The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of work, all necessary safeguards for the protection of workers and the public. They shall post danger signs warning against the hazards created by such features of construction. The Contractor shall designate a responsible member of the firm's organization on the work site whose duty shall be the prevention of accidents.

- b) **Remedial Environmental Investigation Services:** Environmental investigations include Phase I Environmental Site Assessments, Phase II Environmental Site Assessments, Phase III Environmental Site Assessments, ecological risk assessments, human health risk assessments and any other investigations necessary for the DEEP to ensure that public health and the environment are protected. Environmental investigations are conducted, for among other purposes, to determine the past and current uses of a site that may have resulted in a release of a substance or substances to the soil, sediment, surface water or groundwater; determine if such releases have occurred; determine the degree and extent of such releases; and evaluate the compliance with all applicable environmental laws including, but not limited to, the regulations promulgated pursuant to Connecticut General Statutes §22a-133k. Such environmental investigations may, among other actions, require the Contractor to: (1) locate the source of contamination or define the extent and degree of pollution, with a view toward designing a remedial feasibility study and remedial action plan; (2) locate and gather relevant geological, site, or other data including, but not limited to, geologic maps and property records; (3) prepare a site investigation scope of work that proposes the location and number of soil borings, soil samples, soil-gas samples, water samples, groundwater monitoring, surface water or water supply wells, as applicable, and the analytical methods to be used; (4) conduct a site investigation that may include collecting soil, sediment, air, surface water and groundwater samples, and conducting geophysical, hydro geologic and geotechnical testing; (5) prepare reports that describe the investigation conducted, present the results of the investigation, interpret the data collected and make recommendations for further actions; and (6) perform any other activities deemed necessary by the DEEP.
- c) **Remedial Action Design and Oversight Services:** Remedial action services may include the preparation of a remedial action plan that details the actions proposed for remediation of a release(s); design of a remediation system; development of RFP documents and specifications for remedial services; assistance in procurement of a remedial Contractor; oversight and management of remediation and remedial Contractors; conducting monitoring to determine the effectiveness of any such remediation; preparation of a remedial action report that documents the results of remediation conducted, the compliance of the site with respect to environmental laws including, but not limited to, regulations promulgated pursuant to Connecticut General Statutes §22a-133k, and recommends any additional actions; development of RFP documents and specifications for establishing a supply of public water, including design and construction of water mains and residential service connections, abandonment of supply wells, and constructing any necessary project elements, oversight and management of public water supply projects; and any other activity deemed necessary by the DEEP.
- d) **Analytical Services:** The Contractor may procure analytical services be provided by a laboratory that is currently under contract with the State. If the laboratory providing analytical services is under contract with the State, payment for such services shall be limited to the rates set forth in the contract between the laboratory and the State. A Contractor shall not unless authorized by DEEP, utilize a laboratory whose charges for the analytical services provided would exceed the maximum charges for such services using a laboratory under contract with the State. Each invoice which includes charges for laboratory analysis or other analytic services shall include invoices for all such charges, and a copy of the chain of custody documentation for all such analysis. If the laboratory performing analysis or providing analytical services is under contract with the State, either the laboratory itself or the Contractor may submit an invoice to the DEEP regarding such services. If



the invoice is submitted by a Contractor, such Contractor shall ensure that the invoice for analytical services: (1) notes that the laboratory performing such services is under contract with the State; and (2) contains the applicable contract number.

- e) **Conflict of Interest:** Before providing any services at a site, a Contractor shall determine if it is or may be potentially liable, under Connecticut General Statute §22a-451 or any other State or Federal law, for the pollution or contamination at the site. If a Contractor determines that it may be potentially liable, it shall inform the DEEP before initiating services at a site.

A Contractor shall not provide labor, equipment and/or materials at a site if said Contractor may be potentially liable, under Connecticut General Statute §22a-451 or any other State or Federal law, for the pollution or contamination at the site. In addition, the Contractor must determine, before providing services at a site, if any other potential conflict of interest exists. At a minimum, the Contractor must identify any known relationships with current or past owners of the site where services have been requested by the DEEP or any known relationships with parties responsible or potentially responsible for a release at the site where services have been requested by the DEEP. Based on the Contractor's response to this requirement, the DEEP may choose to seek the services of another Contractor, if an actual or potential conflict of Interest exists.

### Section III, Contractual Service Charges and Payments

#### I. Contract Provisions Regarding Labor Charges:

- a) The Client agency shall pay the Contractor for all labor costs incurred in performing services at a site pursuant to the Contract.

Allowable charges for labor include, but shall not exceed the time actually spent traveling to and from the site from either the Contractor's closest place of business or residence whichever is closest. Such time shall not exceed two (2) hours per day, unless otherwise authorized by DEEP.

- b) **Provisions Regarding Equipment Charges:** The Client Agency shall pay the Contractor for all equipment costs for equipment used at a site if the Client Agency determines, in its sole discretion, either before or after equipment is or has been used at a site that:

(1) A task performed by a Contractor at a site could have been accomplished using equipment chargeable at a lower rate than the equipment chosen by a Contractor; or

(2) A Contractor has substituted equipment at a site resulting in a Contractor charging a higher equipment rate, then the allowable equipment charges for any such equipment shall be limited to the lowest equipment rate for equipment which the DEEP, in its sole discretion, determines should or would have been sufficient to complete the tasks performed.

A Contractor may only seek and receive reimbursement for equipment when the equipment at a site is operational. If, for any reason, equipment used at a site becomes inoperable or unusable resulting in a Contractor having to procure, purchase or rent replacement equipment, the allowable equipment charges for any such replacement equipment shall be limited to the equipment rate in effect for the equipment being replaced or the actual costs to the Contractor of procuring or renting replacement equipment, whichever the DEEP, in its sole discretion, determines is lower.

Contractor shall not seek or receive reimbursement of any kind for:

- (1) Repairs to equipment including, but not limited to, labor and parts;
- (2) Any and all costs associated with repairing or replacing inoperable equipment;
- (3) Any and all costs including, but not limited to, any rental, operational or other cost attributable to any period when the equipment reflected in such costs was inoperable or unusable;
- (4) Fuel, oil, replacement filters or similar consumables; and
- (5) Equipment brought to the site, which the DEEP, in its sole discretion, determines is unnecessary.

**c) Maximum Charge for Equipment:** The Contractor may seek only the maximum reimbursement from the DEEP for all equipment costs incurred in performing services at a site pursuant to this contract, provided:

- (1) The total charges for all similar pieces of equipment used at the site must be considered as one (1) piece of equipment when comparing the total amount billed to the original purchase price, unless otherwise authorized by the DEEP.
- (2) The highest priced piece of equipment will be used to set the original purchase price when more than one piece of similar equipment is used at a site.
- (3) The DEEP, in its sole discretion, shall determine which equipment is similar and which equipment is appropriate and necessary for the work conducted at the site.

Prior to initiating work at a site, if the Contractor determines that the total usage charges for a piece of equipment or a similar type of equipment will or is likely to exceed the original purchase cost of any one (1) piece of such equipment, the Contractor must notify DEEP. The DEEP may ask the Contractor to purchase equipment on behalf of DEEP. If equipment is purchased by a Contractor on behalf of DEEP, such equipment will be returned to DEEP at the completion of such task or project and such equipment shall become the property of the DEEP.

The Contractor may no longer bill the DEEP for the use of any equipment listed in Exhibit B when the total amount billed to the DEEP for use of such equipment at a site exceeds the original purchase price of such equipment.

It is the sole responsibility of the Contractor to track the total charges for equipment use at a site, and compare these totals to original purchase prices prior to submitting any invoice to DEEP. Upon request, the Contractor must immediately make available to DEEP supporting documentation that shows the original purchase price of any equipment used at a site under a resulting contract.

**d) Provisions Regarding Material Charges:** The Client Agency shall pay for the costs of all materials used at a site pursuant to this Contract provided:

- (1) The materials for which reimbursement is sought and any costs related to the use of such materials are authorized by and are in full compliance with all applicable requirements of this contract.
- (2) The documentation submitted by the Contractor seeking payment for such material costs fully complies with all applicable requirements of this contract; and
- (3) The Contractor has been and remains in full compliance with all applicable provisions of this contract

**e) Sub Contractors, Labor, Equipment, Materials and/or other Items or Services not in Exhibit B.**

The DEEP recognizes that there are situations that may require a Contractor to seek labor, equipment, materials and/or other items not listed on Exhibit B to complete the services. If the total for such services

or items not in Exhibit B will or is likely to exceed one thousand dollars (\$1,000), the Contractor must request authorization from the DEEP to obtain such services or items.

After the DEEP notifies the Contractor to proceed with subcontracting or procuring such services or items, the Contractor must transmit in writing to the DEEP a justification for obtaining such services or items not in Exhibit B; at least three (3) cost proposals for such services or items; and the Contractor's recommended selection of the most qualified Sub Contractor or most appropriate and cost effective item. Based on the Contractor's authorization request and recommendation of a Sub Contractor, the DEEP may authorize, in writing, the selection of a Sub Contractor.

In the event that a Contractor receives the authorization described in this section, to have services or items not in Exhibit B provided on a subcontract basis said Contractor shall:

- (1) Assume sole and full responsibility for all such services or items provided and shall release and hold the State harmless from any suit, claim, damage, loss, injury, litigation expense, attorneys fee, judgments, liability of any kind, or other compensation regarding any services or items provided on a subcontract basis;
- (2) Remain responsible for ensuring that a Sub Contractor or any services or items provided on a subcontract basis, fully complies with all applicable provisions of the resulting contract; and
- (3) Ensure that any such services or items provided are covered by insurance policies which meet the requirements of resulting contract, unless otherwise specifically authorized by the DEEP.

The DEEP recognizes that there are inherent costs for a Contractor in using the services of a Sub Contractor. Therefore, if the Contractor receives authorization from the DEEP to provide subcontracted services or items not listed in Exhibit B, the Contractor may be eligible to receive a markup of not to exceed ten percent (10%) of the costs actually incurred by said Contractor for any such services or items provided. Authorization, however, from the DEEP to provide any such services or items shall not, in and of itself constitute authorization for a Contractor to receive up to a ten percent (10%) mark-up for such costs. Rather, a Contractor may receive up to a ten percent (10%) mark-up for such costs only if:

- (1) For any costs relating to the use of a Sub Contractor, such Sub Contractor is not itself a Contractor under a resulting contract;
- (2) Any such services or items provided are not included in Exhibit B to a Contractor's proposal;
- (3) Any such services or items were provided in a manner satisfactory and approved to by the Client Agency . In addition to meeting the above three requirements, if the total cost for subcontracted services or items will or is likely to exceed ten thousand dollars (\$10,000), the DEEP will determine, at its sole discretion, after negotiation with the Contractor, the allowable mark-up for such subcontracted services or items, which shall not exceed ten percent (10%).

If a Contractor providing services is authorized to use a Sub Contractor which is itself a Contractor under this Contract, reimbursement for any labor, equipment, materials and/or other items provided by such Sub Contractor shall be limited to and computed at the rates in Exhibit B to such Sub Contractor's response. No increase or mark-up to such Sub Contractor's rates or added costs of any kind shall be allowed for any such labor, equipment, materials and/or other items.

**(f) Daily Field Records:** When providing labor, equipment or materials pursuant to this Contract at the site, each Contractor shall maintain a written daily record, for each day which labor, equipment and/or materials are provided at the site. This daily field record shall include at a minimum:

- (1) A description of the tasks performed for the project for such day;
- (2) The equipment, materials or other items used in performing such tasks;
- (3) The personnel, including Sub Contractors, that performed tasks for the project;
- (4) Time accounting for personnel, equipment and subcontracted services; and

(5) Any other information that the DEEP may require for the project.

Such records must be immediately available upon demand of the DEEP, or auditing agency.

If the DEEP notifies the Contractor that any such records are deficient, the Contractor shall correct the deficiencies and resubmit the records within the time specified by the DEEP, if no time is specified, within thirty (30) days of the DEEP's notice of deficiency.

**(g) Invoicing and Payment:** Each invoice shall include the DEEP project name, address, DEEP purchase order number, and the following:

**(1) Cover Letter.** This letter must clearly describe, by task, activities that were conducted during the billing cycle, the percent completion of all tasks for the project, and the percent of each task's budget that has been billed to date. For each task, if any discrepancies occur or are anticipated between the cost estimate and actual expenditures, the cover letter must describe and justify such discrepancy.

**(2) Labor Spreadsheet.** This sheet must summarize all labor charges. At a minimum, such information must include:

1. Employee names.
2. Classification and contract rate listed on Exhibit B.
3. Total number of hours and charges for each classification, by employee for the billing period.
4. Total number of hours worked per day during the billing period for each task, and subtask, by classification;
5. Summary for each task and subtask that compares the hours billed by each employee classification in relation to the cost estimate included in the scope of work approved by DEEP for the project.

**(3) Equipment Spreadsheet.** This sheet must summarize the following:

1. Equipment used
2. Contracted Rate
3. Total number of hours used per day of billing cycle.
4. justification for use of hourly, daily, weekly, or monthly rate for equipment
5. comparison of total billed amount for equipment or similar equipment with authorized original purchase price
6. justification that equipment used was necessary for task performed,
7. Summary for each task and subtask that compares the hours of equipment use with the cost estimate included in the scope of work for the project approved by the Department.
8. Vehicles used, class, make and model.
9. Purpose of the vehicle usage (e.g. transport staff to site, transport of groundwater sampling equipment for performing sampling of monitoring wells),
10. mileage or hours used, as applicable,
11. number of persons using such vehicle, and

Contractor shall not seek and the DEEP shall not authorize any advance payment for equipment, labor, materials or any other cost. A Contractor shall only seek payment for services rendered, equipment, or materials that have been used, or costs that have been incurred.

When a Contractor submits an invoice that includes equipment for which the original purchase price for such equipment has been met, the Contractor must note "original purchase price met" on such invoice. In such case, the Contractor shall not charge the DEEP for any costs beyond the original purchase price of the equipment.

**(4) Materials Spreadsheet.** This sheet must summarize the following:

1. description and amount of materials used during the billing cycle,
2. description of task completed with such materials, and
3. Summary for each task and subtask that compares the materials used with the cost estimate included in the scope of work for the project approved by the Department.

**(5) Records** requested must be appended to the invoice.

**(6)Receipts.** Copies of all receipts or invoices for all billable items purchased, and all subcontracted services or items must be appended to the invoice.

- f) Invoice discrepancies:** A Contractor shall notify the DEEP, in writing as soon as it can but in no event later than five (5) business days of becoming aware that an invoice submitted to the DEEP contains false, incorrect, incomplete or misleading information. This notification shall include the DEEP project name and address, the false, incorrect, incomplete or misleading information, the correct and/or complete information, if known or ascertainable and a brief explanation of why false, incorrect, incomplete or misleading information was provided to the DEEP. Receipt of any such notification by the DEEP shall not prevent nor shall be deemed or construed to prevent the DEEP from seeking any other right, remedy or sanction available to it in law or equity.

The DEEP reserves the right to require that a Contractor provide any additional information or submit a written verified statement, in a form satisfactory to the DEEP, regarding any portion of any invoice submitted by a Contractor. Revised, corrected, or resubmitted invoices shall be prominently marked "REVISED". Each revised invoice shall identify the original invoice number.

**g) Overpayment by DEEP:**

In the event that the DEEP determines that a Contractor has received an overpayment of any amount, regardless of the cause of any such overpayment, the DEEP may demand the return of any such overpayment from the Contractor, which the Contractor agrees to provide within thirty (30) days of receipt of any such demand. In the event, the Contractor fails to provide reimbursement of any demand within thirty (30) days, the State shall charge the Contractor interest at an annual percentage rate of 10% on any outstanding balance.

In addition to any other remedy specified in this RFP and resulting contract, the DEEP shall have the right to set off against amounts otherwise due a Contractor pursuant to this RFP: (a) any costs incurred by the DEEP which are due to a Contractor's non-compliance with this RFP or any other agreement with this DEEP; or (b) any other amounts that are due and payable from the Contractor to the State. Any sum taken in set off from a Contractor pursuant to this provision shall be deemed to have been paid to a Contractor.

In addition to any other remedy available to it under this RFP and resulting contract, the DEEP in its sole discretion, may withhold all or a portion of any payment due to a Contractor to:

- (1) Assure the payment of claims then due to any person supplying labor, equipment, and/or materials or other items at a site;
- (2) Protect the State from any expense, damage, loss or cost due to deficient or defective work at a site which has not been remedied to the full satisfaction of the DEEP.

- (3) protect the State from any expense, loss, damage or cost arising out of this RFP including, but not limited to, damage to the work or property of other Contractors, Sub Contractors or others caused by a Contractor, its employees, agents or Sub Contractors; or
- (4) Protect the State from any expense, damage, loss or costs arising out of Contractor's non-compliance, as determined by the DEEP, with the terms and conditions of this RFP.

## **Section IV, General Provisions**

### **I. D.E.E.P Duties and Authorities**

- a) Each Contractor shall permit the DEEP, its agents or representatives to enter any portion of a site at any time for any purpose.
- b) DEEP shall have the authority to direct, coordinate and/or oversee all activities, actions or services being conducted at a site. This includes, but is not limited to, the authority to stop work, direct, modify or schedule the performance of any work at a site. Each Contractor providing any service to the DEEP pursuant to this RFP shall fully comply with and shall assist in carrying out any order or direction given by the DEEP.
- c) A Contractor performing activities at a site shall coordinate through the DEEP all activities at a site, shall fully cooperate with all representatives of all allied parties involved including, but not limited to, municipal, State and Federal officials, other Contractors, Sub Contractors, state personnel, public utility companies and others engaged in performing response activities at a site and shall attend such meetings, discussions, hearings as may be requested from time to time by the State to effectuate this cooperation.

### **II. General Health and Safety Plan, OSHA Compliance.**

- a) Each Contractor shall maintain, at all times, a health and safety plan ("the Plan") applicable to all actions undertaken or all activities performed at a site. Such Plan shall ensure that all such actions and activities taken at a site by a Contractor, its employees, agents and Sub Contractors are in full compliance with the Occupational Health and Safety Act of 1970 ("OSHA") 29 U.S.C. §651 et seq., Connecticut General Statute §31-367 et seq., the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq., Connecticut General Statute §22a-449(c) and their implementing regulations, any permit(s) or order(s) issued by the DEEP to such Contractor and all other applicable State and Federal statutes and regulations. Such plan shall be available at the Contractor's principal place of business in the State and shall be made available for inspection during normal business hours or be provided to the DEEP upon request. In addition, each Contractor providing services at a shall maintain a site-specific health and safety plan on-site, as required by applicable occupational health and safety laws. This site-specific shall be available for review by the DEEP immediately upon request. Each Contractor shall be responsible for ensuring that all actions undertaken or all activities performed by such Contractor, its employees, agents and Sub Contractors at a site are in full compliance with the Plan.
- b) In addition to the authority provided in this section of this RFP and resulting contract, if, in its sole discretion, the DEEP determines that any action, inaction or condition at a site is inconsistent with or in violation of a Contractor's health and safety plan, any applicable OSHA or other requirement, or poses or may pose a threat to public safety, human health or the environment, the DEEP shall take whatever activities are necessary to prevent or abate such

threat including, but not limited to, ordering or directing a Contractor to take or refrain from taking certain actions.

### III. Equipment Regulations

- a) Contractors renting or supplying equipment or vehicles are required to equip them with all required devices. Equipment is to be in compliance with all of current as well as subsequent applicable Federal, State of Connecticut, and Municipal Regulations.

In addition, all Contractor and Sub-Contractor on-highway and non-road diesel powered, idle or active, construction equipment with engine horsepower (HP) ratings of 60 HP and above, that are on the project for a period in excess of 60 consecutive or non-consecutive calendar days shall be retrofitted with Emission Control Devices and/or use Clean Fuels in order to reduce diesel emissions. Regularly available on-highway diesel fuel shall be utilized in all on-highway and non-road diesel powered equipment that is not utilizing the specified Clean Fuels.

In addition, all motor vehicles and/or construction equipment (both on-highway and non-road) shall comply with all pertinent State and Federal regulations relative to exhaust emission controls and safety.

The reduction of emissions of carbon monoxide (CO), hydrocarbons (HC), nitrogen oxides (NO<sub>x</sub>), and particulate matter (PM<sub>10</sub>) will be accomplished by installing Retrofit Emission Control Devices or by using less polluting Clean Fuels.

The Retrofit Emission Control Devices shall consist of oxidation catalysts, or similar retrofit equipment control technology that (1) is included on the Environmental Protection Agency (EPA) *Verified Retrofit Technology List* and (2) is verified by EPA or certified by the manufacturer to provide a minimum emissions reduction of 20% PM<sub>10</sub>, 40% CO, and 50% HC.

The Clean Fuels shall consist of low NO<sub>x</sub> and PM<sub>10</sub> emission diesel fuel that (1) can be used without engine modification, (2) is certified to provide a minimum emissions reduction of 30% PM<sub>10</sub> and 10% NO<sub>x</sub> when compared to No. 2 Diesel Fuel, and (3) is included on the California Air Research Board (CARB) Verification List.

Construction shall not proceed until the Contractor submits a certified list of the diesel powered construction equipment that will be retrofitted with emission control devices or that will use Clean Fuels. The list shall include (1) the equipment number, type, make, year and Contractor/sub-Contractor name; (2) the emission control device make, model and EPA verification number; and/or (3) the type and source of fuel to be used.

The Contractor shall submit monthly summary reports, updating the same information stated above, and include certified copies of the clean fuel delivery slips for the report time period, noting which vehicles received the fuel. The addition or deletion of diesel equipment shall be included on the monthly report.

Additionally, the Contractor shall submit bi-weekly reports tracking the number of calendar days (consecutive or non-consecutive) that all Contractor and Sub-Contractor on-highway and non-road diesel powered (idle or active) construction equipment with engine horsepower (HP) ratings of 60 HP and above, is on the project. The list shall include (1) the equipment number, type, make, year and Contractor/sub-Contractor name; (2) the number of calendar days (consecutive or non-consecutive) that the equipment has been on project; (3) emission control device make, model and EPA verification number (if applicable); and/or (4) the type and source of fuel being used (if applicable).

The Contractor shall establish truck-staging zones for vehicles that are waiting to load or unload material at the contract area. Such zones shall be located where the emissions from the trucks will have minimum impact on abutters and the general public. Idling of delivery and/or dump trucks, or other equipment shall not be permitted during periods of non-active use, and it should be limited to three minutes in accordance with the Regulations of Connecticut State Agencies Section 22a-174-18(b)(3)(c):

No mobile source engine shall be allowed “to operate for more than three (3) consecutive minutes when the mobile source is not in motion, except as follows:

- (i) When a mobile source is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control,
- (ii) When it is necessary to operate defrosting, heating or cooling equipment to ensure the safety or health of the driver or passengers,
- (iii) When it is necessary to operate auxiliary equipment that is located in or on the mobile source to accomplish the intended use of the mobile source,
- (iv) To bring the mobile source to the manufacturer’s recommended operating temperature,
- (v) When the outdoor temperature is below twenty degrees Fahrenheit (20 degrees F),
- (vi) When the mobile source is undergoing maintenance that requires such mobile source be operated for more than three (3) consecutive minutes, or
- (vii) When a mobile source is in queue to be inspected by U.S. military personnel prior to gaining access to a U.S. military installation.”

All work shall be conducted to ensure that no harmful effects are caused to adjacent sensitive receptors. Sensitive receptors are to include but not be limited to hospitals, schools, daycare facilities, elderly housing and convalescent facilities. Exhaust from engines shall be located away from fresh air intakes, air conditioners, and windows. A Diesel Emissions Mitigation plan will be required for areas where extensive work will be performed in close proximity (less than 50 feet (15 meters)) to sensitive receptors. No work will proceed until a sequence of construction and a Vehicle Emissions Mitigation plan is submitted in writing to the Engineer for review and all comments are addressed prior to the commencement of any extensive construction work in close proximity (less than 50 feet (15 meters)) to sensitive receptors. The mitigation plan must address the control of vehicle emissions from all vehicles and construction equipment.



If any diesel powered construction equipment is found to be in non-compliance with this specification, the Contractor will be issued a Notice of Non-Compliance and given a 24 hour period in which to bring the equipment into compliance or remove it from the project. If the Contractor then does not comply with these “Diesel Vehicle Emissions Controls”, the Engineer shall withhold all payments for the work performed on any item(s) on which the non-conforming equipment was utilized for the time period in which the equipment was out of compliance.

Any costs associated with this “Diesel Vehicle Emissions Controls” notice shall be included in the general cost of the contract. In addition, there shall be no time granted to the Contractor for compliance with this notice. The Contractor’s compliance with this notice and any associated regulations shall not be grounds for claims.

The Contractor is responsible for controlling air pollution at all times during work, 24 hours a day, 7 days per week, including non-working hours, weekends and holidays.

The Contractor shall comply with all State and federal regulations pertaining to dust control. Particular attention shall be made to the Regulations of Connecticut State Agencies Section 22a-174-18a, b “Control of Particulate Emissions”.

The Contractor shall submit a dust control plan to the State within 30 days after the Award of the Contract.

The dust control plan shall include contact information for the responsible individual(s) from the Contractor (24-hour availability) who have authority to implement necessary controls.

The plan should detail dust control procedures for anticipated activities that may typically generate dust (ex. Jack hammering, saw-cutting pavement, haul roads, material storage sites, etc.)

The cost for the dust control submittal associated with this “Dust Control” notice shall be included in the general cost of the contract. Payment for the application of dust control items included in the Contract will be under those respective items.

#### **IV. Responsibility and Protection for Items at a Site**

- a) Contractor agrees that it shall keep and hold the State, its officers, agents harmless and that the State will not be liable for and assumes no liability for any temporary structures, supplies, materials, equipment, owned or leased, or anything else of value which a Contractor stores, keeps or maintains at a site. Each Contractor shall be solely responsible for securing and providing security for any such temporary structure(s), supplies, materials, equipment, owned or leased, or anything else of value, which a Contractor stores, keeps or maintains at a site. In addition and with respect to all work performed pursuant to this RFP, a Contractor shall:

- (1) Continuously and adequately protect the work performed at a site including, but not limited to, all equipment and/or materials against damage from any cause; and

(2) Provide and maintain safeguards for the protection of the public and for all persons undertaking response actions at a site including, but not limited to, posting adequate warning signs or taking steps to prevent the public from entering certain areas.

## Section V, Records and Correspondences

## Section VI, Contract Implementation

**a) Contract Implementation.** The scope of this contract includes services on a standard or specialized basis. The contract user will select a Contractor according to the procedures set forth below.

**b) Standard Contract Use.** The Client Agency will request a work plan and cost estimate for required services from all Contractors. Contractors will then be required to submit a work plan and cost estimate that will accomplish the work task requested by the Client Agency. The Client Agency will evaluate each of the proposals and authorize the selected Contractor to proceed. The Client Agency may provide comments or other conditions to revise the selected Contractor's work plan.

**c) Specialized Contract Use.** The Client Agency will request a work plan and cost estimate after providing a detailed scope of services request from Contractors deemed to be most qualified and consistent to the initial selection of the award. At the discretion of the State, and to serve the State's best interests, the State may select a single Contractor to submit a work plan and cost estimate. The State's best interests are determined by factors that include special expertise, past performance, project knowledge, time sensitivity, or other factors determined by the State.

**Note:** In both the Standard and Specialized use of the contract the DEEP will select the Contractor with the most advantageous, responsive, and lowest project cost based on review of all work plans and cost estimates.

**CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES 12PSX0097**

<b>Table of Federal Laws, as amended</b>
Act to Prevent Pollution from Ships (33 U.S.C. §§1901 to 1912)
Asbestos Hazard Emergency Response Act of 1986 (15 U.S.C. §§2641 to 2654)
Clean Air Act (42 U.S.C. §§7401 To 7642)
Clean Vessel Act of 1992 (33 U.S.C. §1322 )
Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. §§3951 to 3956)
Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 to 1464)
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§9601 to 9675)
Emergency Planning and Right-To-Know Act of 1986 (42 U.S.C. §§11001 to 11050)
Endangered Species Act of 1973 (16 U.S.C. §§1531 to 1544)
Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 to 136y)
Federal Water Pollution Control Act (33 U.S.C. §§1251 to 1387)
Lead-Based Paint Exposure Reduction Act (15 U.S.C. §§2681 to 2692)
Lead Contamination Control Act of 1988 (42 U.S.C. §§300j-21 to 300j-25)
Medical Waste Tracking Act of 1988 (42 U.S.C. §§6992 to 6992k)
National Ocean Pollution Planning Act of 1978 (33 U.S.C. §§1701 to 1709)
Noise Control Act of 1972 (42 U.S.C. §§4901 to 4918)
Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. §§4701 to 4751)
Nuclear Waste Policy Act of 1982 (42 U.S.C. §§10101 to 10270)
Ocean Dumping Ban Act of 1988 (33 U.S.C. §§1414b, 1414c)
Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. §§2401 to 2410)
Pollution Prevention Act of 1990 (42 U.S.C. §§13101 to 13109)
Public Health Service Act (42 U.S.C. §§300f to 300j-11)
Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 to 6991i)
Rivers and Harbors Appropriation Acts (33 U.S.C. §§401 to 426p and 441 to 454)
Safe Drinking Water Act (42 U.S.C. §§300f to 300j-11)
Shore Protection Act of 1988 (33 U.S.C. §§2601 to 2609 & 2621 to 2523)
Soil and Water Resources Conservation Act of 1977 (16 U.S.C. §§2001 to 2009)
Solid Waste Disposal Act (42 U.S.C. §§6901 to 6991i)
Toxic Substance Control Act (15 U.S.C. §§2601 to 2692)

# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Fuss & O'Neill, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the "Contract") is made as of the 25th day of October 2012, in the year 2012, by and between, Fuss & O'Neill, Inc. (the "Contractor,") with a principal place of business at 146 Hartford Road, Manchester, CT 06040, acting by John B. Hankins, its Senior Vice President and the State of Connecticut, Department of Administrative Services ("DAS"), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) Client Agency: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) Confidential Information: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver's license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client's financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as "confidential" or "restricted". Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) Confidential Information Breach: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
  - (e) Contract: The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.
- (r) **Termination:** An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
- (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
- (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:
- (1)they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and



relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;

- (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.
  8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the

Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.

9. Termination.

- (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
- (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
- (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
- (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
- (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they

comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.

22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;
- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

(bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and

(cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

(a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.

(b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.

(c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.

(d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.
- (a) For purposes of this Section, the following terms are defined as follows:
- (1) "Commission" means the Commission on Human Rights and Opportunities;
  - (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
  - (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
  - (4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or

assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

- (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;
  - (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;
  - (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and
  - (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- (c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to the Contractor:

Fuss & O'Neil, Inc.  
146 Hartford, Rd.  
Manchester, CT 06040  
Attention: John Hankins

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary
- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000,00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.
38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.
39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to “Contractor” or “Proposer” shall also be deemed to include “Contractor Parties” or “Proposer Parties,” respectively, as if such reference had originally specifically included “Contractor Parties” or “Proposer Parties,” since it is the parties’ intent for the terms “Contractor Parties” and “Proposer Parties” to be vested with the same respective rights and obligations as the terms “Contractor” and “Proposer.”
40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:
- a) its certificate of incorporation or other organizational document;
  - b) more than a controlling interest in the ownership of the Contractor; or
  - c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS’s satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS’s written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.
42. Audit and Inspection of Plants, Places of Business and Records.
- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State’s Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor’s and Contractor Parties’ plants and

places of business which, in any way, are related to, or involved in, the performance of this Contract.

- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
  - (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
  - (d) All audits and inspections shall be at the State's expense.
  - (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
  - (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
  - (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.
43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.
44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.
45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.

**46. Contractor Responsibility.**

- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

**47. Severability.** If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

**48. Confidential Information.** The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

**49. Interpretation.** The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be

construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

55. Reserved

56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].

57. Health Care Portability and Accountability Act.

- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
- (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
- (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.
- (g) Definitions. For the purposes of this Section of the Contract:
  - (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
  - (2) “Business Associate” shall mean the or Contractor or Contractor Parties.
  - (3) “Covered Entity” shall mean the Client Agency.

- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the



requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.

(14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.

(15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations

(16) Obligations in the Event of a Breach

(A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.

(B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

(C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:

1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
  - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
  - (A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered

Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

- (1) **Regulatory References.** A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- (2) **Amendment.** The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (3) **Survival.** The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) **Effect on Contract.** Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- (5) **Construction.** This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- (6) **Disclaimer.** Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) **Indemnification.** The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's

fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
  - (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.

- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

- 60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Fuss & O'Neill, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

John B. Hankins

Carol Wilson

Print or Type Name

Print or Type Name

Title: Senior Vice President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

General Statutes.

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>Fuss &amp; O'Neill, Inc.</u>			
MATERIAL COSTS			
	Materials	Units	Unit Price \$0.00
	17H Drum	Each	40
	17C Drum	Each	60
	17E Drum	Each	40
	Poly Rolls/Sheets	Roll	70
	5 Gallon Plastic Pails	Each	NC
	2" Locking Well Cap	Each	9
	1.5" Locking Well Cap	Each	7.50
	Padlocks Keyed to One Master Key	Each	15
	Encore Soil VOC Sampler	Each	10
	TerraCore Soil VOC Sampler	Each	2
	Petro Flag Sampler	Each	25
	Hand GeoProbe Sleeves	Each	4
	Tyvek Suit	Each	35
	Sample Tubing	Foot	0.65
	Disposable Filters	Each	20
	GEOPROBE		
	GeoProbe Soil Sample Sleeve (Macrocore 5')	Each	7
	3.5" Expandable Point	Each	30
	1.5" Prepack Well (5')	Each	125
	1.5" PVC riser (5')	Each	20
	1.5" Bottom Plug	Each	12
	Sand	Bag	10
	Bentonite	Bag	20
	Asphalt	Bag	15
	Concrete	Bag	15
	Cub Box Well Cover (4")	Each	35
	Locking Stand Pipe	Each	100
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>Fuss &amp; O'Neill Inc.</u>							
<b>EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)</b>							
Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	0	Subcontracted	NA	NA	NA	NA	NA
Direct push drill rig (indicate size and type)	1	GeoProbe 662DT	\$75	\$600	\$2,800	\$8,000	\$100,000
Flow through cell <a href="#">and data analyzer</a> for low flow sampling (specify type)	4	YSI ProPlus	\$7.50	\$60	\$280	\$750	\$1,500
Magnetometer	---						Rental-At-Cost
XRF	---						Rental-At-Cost
Metal detector	2	Schmested	\$3.25	\$25	\$100	\$300	\$1,300
Photo ionization detector	2	Photocheck Tiger	\$8.25	\$65	\$250	\$800	\$2,500
Flame Ionization Detector	---						Rental-At-Cost
Multi-gas Meter (specify type)	---						Rental-At-Cost
Landfill Gas Meter	---						Rental-At-Cost
Core Drill	1	MILW/NKEF	\$32	\$200	\$950	\$3000	\$13,000
Hammer Drill	2	Bosch	\$7	\$50	\$200	\$500	\$2,600
Manometer	---						Rental-At-Cost



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>Fuss &amp; O'Neil, Inc.</u>			
<b>Labor Rates</b>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>4</u> .	\$95	\$95
Biologist (Senior)	See Biologist Specify minimum years of experience <u>8</u> .	\$110	\$110
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$75	\$75
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience <u>5</u> .	\$90	\$90
Chemist (Senior)	See Chemist Specify minimum years of experience <u>8</u> .	\$110	\$110
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$75	\$75
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	\$90	\$90
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	\$60	\$60
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>6</u> and specialty.	\$110	\$110

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>10</u> and specialty.	\$125	\$125
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>3</u> and specialty.	\$95	\$95
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>8</u> and specialty.	\$98	\$98
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>20</u> and specialty.	\$210	\$210
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$70	\$70
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	\$95	\$95
Geologist senior	See geologist Specify minimum years of experience <u>10</u> .	\$125	\$125

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	\$95	\$95
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>10</u> .	\$125	\$125
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$105	105
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	\$90	\$90
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$160	\$160
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience <u>5</u> .	\$110	\$110
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>10</u> .	\$120	\$120
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$90	\$90
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$55	\$55
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>10</u> .	\$145	\$145
Technical Expert (provide specialty)	Provide description Specify minimum years of experience <u>20</u> and specialty.	\$160	\$160

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: Fuss & O'Neill, Inc.

**Proposed and or additional labor not previously specified**

Title/Class	Job Tasks	Straight Time	Overtime
Senior Project Manager	See Project Manager description – add additional Experience – 15 Years	\$165	\$165
Principal	See Attached PAOE 8 20 Years	\$180	\$180
Senior Landscape Architect	Bachelor’s Degree in Architecture Provides design services related to site development – 10 Years	\$125	\$125
Senior Graphic Designer	Provide graphic design support to engineers and scientist to assist in reports and presentations – 5 Years	\$95	\$95
Engineer	See Project Engineer Entry Level Position	\$80	\$80
Senior Technician	Provides data management and QA/QC support 5 Years	\$80	\$80
Senior Construction Inspector	Provides inspection on construction projects 20 Years	\$105	\$105
Hydrogeologist	See Project Hydrogeologist Entry Level Position	\$80	\$80

# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Groundwater & Environmental Services, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012, by and between, Groundwater & Environmental Services, Inc. (the “Contractor,”) with a principal place of business at 440 Creamery Way, Suite 500, Exton, PA 19341, acting by Edward Van Woudenberg, its President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. **Definitions.** Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims:** All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency:** Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information:** This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach:** This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (q) State: The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.
  - (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017 The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the

terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.
8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the

Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.

11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.

12. Waiver.

- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

- (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying

out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (a) Perform fully under the Contract;
- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
- (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
- (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates “motor vehicles,” as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles (“ConnDMV”) in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state’s or commonwealth’s applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator’s license or commercial driver’s license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000

pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical



assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

### 33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
  - (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Groundwater and Environmental Services, Inc.  
440 Creamery Way Suite 500  
Exton, PA 19341  
Doug Liddell

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary
- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those

provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the

availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.



53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
- (2) “Business Associate” shall mean the Contractor or Contractor Parties.
- (3) “Covered Entity” shall mean the Client Agency.
- (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA Provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.



- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Groundwater & Environmental Services, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Edward Van Woudenberg

Carol Wilson

Print or Type Name

Print or Type Name

Title: President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>Proposer:</b> <u>Groundwater &amp; Environmental Services, Inc.</u>			
<b>MATERIAL COSTS</b>			
	Materials	Units	Unit Price
	10"X10"X60" Trough Box	EA	\$ 215.00
	12"X12" Double Bolt Manhole	EA	\$ 95.00
	24"X24"X24" Locking Manhole	EA	\$ 300.00
	3/4" Foot Valve	EA	\$ 15.00
	30"X30"X18" Locking Manhole	EA	\$ 275.00
	55GAL Drum	EA	\$ 70.00
	95GAL Overpack Drum	EA	\$ 230.00
	Bailer Disposable	EA	\$ 6.00
	Filter Bag/Cartridge 50 MICRON	EA	\$ 7.00
	2" Locking Gripper Plug	EA	\$ 16.00
	4" Locking Gripper Plug	EA	\$ 18.00
	Loose Carbon	LB	\$ 2.00
	Well Lock	EA	\$ 10.00
	Mini-boom	EA	\$ 7.00
	Pressure Filter/Bailers	EA	\$ 20.00
	Particulate Filter (per housing)	EA	\$ 40.00
	Cartridge Filter	EA	\$ 12.00
	Sorbent Boom 8"X10'	EA	\$ 31.00
	Sorbent Pillow	EA	\$ 11.00
	Sample Points	EA	\$ 10.00
	Tedlar Bags	EA	\$ 15.00
	Teflon Sleeves	EA	\$ 16.00
	8" Roadbox	EA	\$ 55.00
	12" Roadbox	EA	\$ 120.00
	18" Roadbox	EA	\$ 140.00
	80# Gravel Mix	BG	\$ 7.00
	Asphalt Cold Patch	BG	\$ 10.00
	Sump Skimmer	EA	\$ 4.50
	<b>DAPL/Hype Air Mob/Demob/Per Diem</b>		
	Per Diem (Hotel & Meals) per Operator	DY	\$ 180.00
	2-hour DAPL/Hype Air Extension **	2 hour	\$ 290.00
	DAPL/HYPEAIR Mob./Demob.(beyond 100 miles from home base)	Mile	\$ 1.52
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: Groundwater & Environmental Services, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price <sub>3</sub>
Drill rig (indicate size and type)	1 <sub>1,2</sub>	CME-55 (truck mounted w/ 2-man crew) or equivalent	NA	\$2,000	\$10,000	\$40,000	\$160,000
Direct push drill rig (indicate size and type)	1 <sub>1,2</sub>	Geoprobe 6600 or equivalent	NA	\$1,800	\$9,000	\$36,000	\$85,000
Flow through cell and data analyzer for low flow sampling (specify type)	2	YSI 6820 or equivalent	NA	\$150	\$350	\$1,000	\$9,000
Magnetometer	1 <sub>1,2</sub>	MAC 51BX Cable and Pipe Locator	NA	\$70	\$210	\$630	\$2,000
XRF	1 <sub>1,2</sub>	Innov-X Alpha 4000 XRF	NA	\$700	\$2,100	\$6,300	\$30,000 to \$50,000
Metal detector	1 <sub>1</sub>	GA-72Cd Magnetic Locator or equivalent	NA	\$40	\$130	\$380	\$1,000
Photo ionization detector	3	MiniRAE 2000 or equivalent	\$15	\$75	\$325	\$700	\$3,500 - \$4,000
Flame Ionization Detector	3	Photovac MicroFID or equivalent	\$20	\$100	\$400	\$1,600	\$9,000
Multi-gas Meter (specify type)	3	Industrial Scientific MG140 or equivalent	\$10	\$35	\$140	\$560	\$1,000 to \$1,500
Landfill Gas Meter	1 <sub>1</sub>	Industrial Scientific MG140 or equivalent	\$10	\$35	\$140	\$560	\$1,000 to \$1,500
Core Drill	1 <sub>1</sub>	Hilti DD130 w/stand or equivalent	NA	\$150	\$500	\$2,000	\$1,500 - \$2,000
Hammer Drill	1 <sub>1</sub>	2" Bosch or equivalent	NA	\$65	\$325	\$1200	\$500 - \$1,000
Manometer	1 <sub>1</sub>	Generic	NA	\$45	\$200	\$800	\$100

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: Groundwater & Environmental Services, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price <sub>3</sub>
Survey equipment (specify type)	1 <sub>1</sub>	Topcon GTS-220 or equivalent	NA	\$140	\$420	\$1,260	\$5,900
Utility class vehicles: (includes cargo vans and trucks)	6	Ford F-150, Chevrolet Express Van, or equivalent	\$25	\$130	\$550	\$2,000	\$25,000 – \$35,000
Transport Class Vehicles: (includes passenger cars, pick up trucks and passenger vans)	1 <sub>1</sub>	NA	Specify Mileage rate only:	0.50/Mile or standard Government rate	NA	NA	NA
Drill rig (track rig) (indicate size and type)	1 <sub>1,2</sub>	CME-55LC (track rig w/ 2-man crew) of equivalent	NA	\$2,400	\$12,000	\$48,000	\$50,000 to \$100,000
2 Channel Data Logger & Transducers	1 <sub>1</sub>	In Situ Level Troll 700 with 25' cable or equivalent	NA	\$125	\$300	\$1,200	\$2,500
4 Channel Data Logger & Transducers	1 <sub>1</sub>	In Situ Level Troll 700 with 25' cable or equivalent	NA	\$300	\$1,000	\$3,500	\$3,500
Air Velocity Meter	2 <sub>1</sub>	Dwyer Thermal Anemometer Series 471B or equivalent	\$10	\$35	\$140	\$350	\$350
Data Acquisition Processing Lab (DAPL) *	2	GES DAPL Unit	NA	\$3,600	NA	NA	NA
Data Acquisition Processing Lab (DAPL) w/ICE Vapor Treatment *	2	GES DAPL Unit	NA	\$4,100	NA	NA	NA
Digital Camera	6	Canon A590 IS or equivalent	NA	\$10	NA	NA	NA
Dissolved Oxygen Meter (DO Meter)	1 <sub>1</sub>	YSI 6820 or equivalent	\$10	\$35	\$140	\$560	\$9,000

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: Groundwater & Environmental Services, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price <sub>3</sub>
LEL/O <sub>2</sub> meter/Explosimeter	3	Industrial Scientific MG140 or equivalent	\$10	\$35	\$140	\$560	\$1,000 to \$1,500
Interface Probe	3 <sub>1</sub>	Solinst 122 (150') or equivalent	NA	\$25	\$100	\$400	\$1,100
Blower - Regenerative Explosion Proof (90-135CFM)	1 <sub>1,2</sub>	Rotron EN505 or equivalent	NA	\$90	\$250	\$800	\$2,200
Blower - Ventilation Explosion Proof	1 <sub>1,2</sub>	Ramfan UB20XX or equivalent	NA	\$75	\$200	\$450	\$2,000 -\$2,500
Centrifugal Pump (1-45gpm)	1 <sub>1,2</sub>	Hilge 316 S or equivalent	NA	\$70	\$300	\$400	\$2,500
Discharge Hose 50'	1 <sub>1,2</sub>	Goodyear Engineering Products DP200-50CE-G or equivalent	NA	\$19	\$33	\$67	\$100
Double Diaphragm Pump	1 <sub>1,2</sub>	Dayton 6PY44 or equivalent	NA	\$60	\$225	\$900	\$900
Pneumatic Product Pump	1 <sub>1</sub>	Dayton 5UWG6 or equivalent	NA	\$60	\$125	\$250	\$900
Redi Flo Submersible	2 <sub>1</sub>	Grunfos Redi-Flo2 or equivalent	NA	\$85	\$225	\$900	\$1,250
Submersible (0.5-100gpm) (Electric or Pneumatic)	2 <sub>1</sub>	QED Sample Pro Bladder Pump or equivalent	NA	\$60	\$225	\$900	\$1,250
Suction Hose 25' length	1 <sub>1,2</sub>	Goodyear Engineering Products SP200-20CE-G or equivalent	NA	\$20	\$45	\$50	\$50
Transfer Pump-Progressive Cavity	1 <sub>1</sub>	Moyno Model 333 or equivalent	NA	\$85	\$300	\$400	\$1,300

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: Groundwater & Environmental Services, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price <sub>3</sub>
Trash Pump	1 <sub>1</sub>	Honda 637080 or equivalent	NA	\$55	\$165	\$450	\$600
Air Stripper	1 <sub>1,2</sub>	NEEP 2351-P or equivalent	NA	NA	\$800	\$2,000	NA
Vapor or Liquid Carbon Drum (200 lb) - w/o carbon	1 <sub>1,2</sub>	CalgonCarbon VENTSORB PE or equivalent	NA	\$30	\$50	\$400	NA
HypeAir Truck w/Ozone Generator w/o Monitoring Equipment *	1 <sub>1</sub>	HypeAir Truck	NA	\$3,600	NA	NA	NA
Holding Tank 56 - 500 GAL	1 <sub>1,2</sub>	IBC Plastic Tank 4UDY4 or equivalent	NA	\$30	\$80	\$300	\$500
35KW Tow Behind Generator	1 <sub>1,2</sub>	Ingersoll Rand G40 or equivalent	NA	\$250	\$750	NA	\$800
Acetylene Welder	1 <sub>1,2</sub>	Victor X-3B Turbo Torch or equivalent	NA	\$110	\$350	NA	\$350
Compressor w/hose 85/125CFM	1 <sub>1</sub>	Ingersoll Rand 45464112 or equivalent	NA	\$120	\$400	NA	NA
Compressor-Reciprocating	1 <sub>1</sub>	Ingersoll Rand 2545E10V or equivalent	NA	\$75	\$125	\$250	NA
Concrete Mixer	1 <sub>1</sub>	Marshalltown MIX59289 or equivalent	NA	\$95	\$185	NA	NA
Demolition Saw	1 <sub>1</sub>	Husqvarna K760 or equivalent	NA	\$48	\$145	NA	NA
Generator (5KW)	1 <sub>1</sub>	Dayton 2ZRR2 or equivalent	NA	\$60	\$180	NA	\$450
Jack Hammer Air	1 <sub>1</sub>	Ingersoll Rand PB35AL8 or equivalent	NA	\$135	\$405	NA	\$500
Jack Hammer Electric	1 <sub>1</sub>	Neiko Electric Jackhammer or equivalent	NA	\$67	\$200	NA	\$300

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: Groundwater & Environmental Services, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price <sub>3</sub>
Pavement Saw (walk behind)	1 <sub>1</sub>	Husqvarna FS 520 or equivalent	NA	\$300	\$1200	NA	\$1800

**Notes:**

NA = not available, not applicable, or no offer

<sub>1</sub> = Not owned directly by GES, Inc. To be provided via equipment rental and/or subcontractor.

<sub>2</sub> = In addition to rate specified, GES, Inc. will competitively procure this equipment on a project specific basis to secure the most favorable rate.

<sub>3</sub> = Equipment/material rented on open market from subcontractor or vendor. Pricing based on open market or literature.

\* Equipment and operator for in-situ remedial technology pilot tests (inclusive of chemical oxidation), up to 8 hours on-site plus travel within 100 miles of. Includes pilot test platform (DAPL) or Hype Air platform and equipment.

\*\* includes an additional 2-hours of on-site time for GES' DAPL or HypeAir equipment with operator



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<p><b>Proposer:</b> <u>Groundwater &amp; Environmental Services, Inc.</u></p> <p style="text-align: center;"><b>Labor Rates</b></p>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>4</u> _____.	\$95	\$95
Biologist (Senior)	See Biologist Specify minimum years of experience <u>8</u> _____.	\$130	\$130
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data. Specify minimum years of experience <u>4</u> _____.	\$95	\$95
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation. Specify minimum years of experience <u>4</u> _____.	\$95	\$95
Chemist (Senior)	See Chemist Specify minimum years of experience <u>8</u> _____.	\$105	\$105
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$55	\$83
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	NA	NA
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	NA	NA
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>6</u> _____ and specialty.	\$105	\$105

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<p><b>Proposer:</b> <u>Groundwater &amp; Environmental Services, Inc.</u></p>			
<p><b>Labor Rates</b></p>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>8</u> and specialty.	\$130	\$130
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>4</u> and specialty.	\$95	\$95
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>6</u> and specialty.	\$105	\$105
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>10</u> and specialty.	\$169	\$169
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$56	\$84
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>4</u> .	\$95	\$95
Geologist senior	See geologist Specify minimum years of experience <u>8</u> .	\$105	\$105

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<p><b>Proposer:</b> <u>Groundwater &amp; Environmental Services, Inc.</u></p> <p style="text-align: center;"><b>Labor Rates</b></p>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>4</u> .	\$95	\$95
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>8</u> .	\$105	\$105
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$130	\$130
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	Subcontracted	Subcontracted
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title. Specify minimum years of experience <u>8</u> .	\$135	\$135
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience <u>5</u> .	\$85	\$85
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>6</u> .	\$130	\$130
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors. Specify minimum years of experience <u>4</u> .	\$130	\$130

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>Proposer:</b> <u>Groundwater &amp; Environmental Services, Inc.</u>			
<b>Labor Rates</b>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material.	\$50	\$75
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>_10_</u> .	\$115	\$115
Technical Expert (provide specialty)	Provide description Specify minimum years of experience <u>_10_</u> and specialty.	\$130	\$130
Technical Expert - Provide Specialty	B.S. degree in Environmental Science, or other scientific discipline. Specify minimum years of experience <u>_6_</u> .	\$90	\$90
Geologist - Junior	B.S. degree in Geology. Under close supervision, this person executes, supervises, and documents field aspects of environmental site assessment and remediation using standard operating procedures (SOPs). Specify minimum years of experience <u>_0-1_</u> .	\$65	\$65
Environmental Scientist - Junior	B.S. degree in Environmental Science, or other scientific discipline. Under close supervision, this person executes, supervises, and documents field aspects of environmental site assessment and remediation using standard operating procedures (SOPs). Specify minimum years of experience <u>_1+_</u> .	\$65	\$65
Engineer - Associate	B.S. degree in an engineering discipline. Under close supervision performs project support activities including data review and evaluation, data management, routine and advanced reporting, field activities, and minor project management support. Specify minimum years of experience <u>_0-2_</u> .	\$75	\$75
Geologist - Associate	B.S. degree in Geology. Under close supervision performs project support activities including data review and evaluation, data management, routine and advanced reporting, field activities, and minor project management support. Specify minimum years of experience <u>_1+_</u> .	\$78	\$78
Environmental Scientist - Associate	B.S. degree in Environmental Science, or other scientific discipline. Under close supervision performs project support activities including data review and evaluation, data management, routine and advanced reporting, field activities, and minor project management support. Specify minimum years of experience <u>_2+_</u> .	\$75	\$75

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<p><b>Proposer:</b> <u>Groundwater &amp; Environmental Services, Inc.</u></p> <p style="text-align: center;"><b>Labor Rates</b></p>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Engineer - Staff	B.S. degree in and engineering discipline. Under general supervision, this person provides project management support, including minor client involvement, work plan and proposal preparation, project scheduling and deadline tracking, budget evaluation and analysis, and technical editing and report finalization. Specify minimum years of experience __2+__.	\$85	\$85
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Geologist - Staff	B.S. degree in Geology. Under general supervision, this person provides project management support, including minor client involvement, work plan and proposal preparation, project scheduling and deadline tracking, budget evaluation and analysis, and technical editing and report finalization. Specify minimum years of experience __2+__.	\$85	\$85
Environmental Scientist - Staff	B.S. degree in Environmental Science, or other scientific discipline. Under general supervision, this person provides project management support, including minor client involvement, work plan and proposal preparation, project scheduling and deadline tracking, budget evaluation and analysis, and technical editing and report finalization. Specify minimum years of experience __8__.	\$85	\$85
Environmental Scientist - Project	B.S. degree in geology or applicable scientific discipline. Provides project support activities, including client involvement, work plan and proposal preparation, project scheduling and deadline tracking, budget evaluation and analysis, and technical editing and report finalization. Specify minimum years of experience __5__.	\$95	\$95
Environmental Scientist - Senior	P5 Senior Environmental Scientist if that individual possesses degree in sciences Specify minimum years of experience __8__.	\$130	\$130

# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**GZA Geo Environmental, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012, by and between, GZA Geo Environmental, Inc. (the “Contractor,”) with a principal place of business at 655 Winding Brook Drive, Suite 402, Glastonbury, CT 06033, acting by Kathleen A. Cyr, its Principal and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. **Definitions.** Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims:** All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency:** Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information:** This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach:** This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (q) State: The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.
  - (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017. The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the

terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.
8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the

Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.

11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.

12. Waiver.

- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

- (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying

out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (a) Perform fully under the Contract;
- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
- (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
- (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.



21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates “motor vehicles,” as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles (“ConnDMV”) in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state’s or commonwealth’s applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator’s license or commercial driver’s license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000

pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the



Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

GZA GEO Environmental, Inc.  
655 Winding Brook Drive Suite 402  
Glastonbury, CT 06033  
Attention: Kathleen Cyr

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary
- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

(g) Claims Made: Not acceptable with the exception of Professional Liability when specified.

(h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate

(i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those

provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
  - (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the

availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.



(g) Definitions. For the purposes of this Section of the Contract:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client Agency.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

GZA Geo Environmental, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Kathleen A. Cyr

Carol Wilson

Print or Type Name

Print or Type Name

Title: Principal

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>GZA GeoEnvironmental, Inc.</u>			
MATERIAL COSTS			
	Materials	Units	Unit Price
	Stainless Steel Bailers	EACH	\$6.00
	Disposable Bailers	EACH	\$10.00
	Dexsil 2000	EACH	\$60.00
	Wood Stakes	EACH	\$1.00
	Marking Paint	CAN	\$4.00
	Survey Tape	ROLL	\$2.00
	Survey Flags	EACH	\$0.10
	Field Camera	EACH	\$20.00
	Caution Tape	ROLL	\$8.00
	Sorbent Pads	PAD	\$1.00
	Bags of Ice for Sample Coolers	BAG	\$2.00
	Propane Torch	EACH	\$10.00
	Health and Safety Pack (Includes: gloves, Tyvek suit, rubber boots)	EACH	\$10.00
	Respirator Cartridges	EACH	\$20.00
	Metals Filters	EACH	\$20.00
	Tubing/1/2-inch I.D. Black Poly.	FOOT	\$0.50
	Tubing 3/16-inch I.D. Polyethylene	FOOT	\$0.50
	Tubing Double: 3/16 & 3/8-inch I.D. Poly.	FOOT	\$2.00
	Tubing Double: 3/16 & 3/16-inch I.D. Poly.	FOOT	\$2.00
	2" Bladder Pump Bladders (Poly)	EACH	\$6.00
	1" Bladder Pump Bladders (Tedlar)	EACH	\$12.00
	Tubing/1/4-inch I.D. Silicone	FOOT	\$3.00
	Tubing 1/2-inch Silicone	FOOT	\$4.50
	Soil Probe Sleeves	EACH	\$5.00
	Encore Samplers	EACH	\$10.00
	Tedlar Bags	EACH	\$25.00
	Soil Vapor Stainless Steel Probe Tips	EACH	\$40.00
Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.			

PROPOSER: GZA GeoEnvironmental, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	0	Subcontracted	N.A.	N.A.	N.A.	N.A.	N.A.
Direct push drill rig (indicate size and type)	0	Subcontracted	N.A.	N.A.	N.A.	N.A.	N.A.
Flow through cell and data analyzer for low flow sampling (specify type)		YSI 556A multiparameter probe, Hach turbidity meter, flow thru cell, pump, water level indicator	\$30	\$150	\$600	\$2,400	\$3,500
Magnetometer	1	Schonstedt 72CD	\$8	\$40	\$160	\$640	\$600
XRF	0	(Subcontracted - License Required)	N.A.	N.A.	N.A.	N.A.	N.A.
Metal detector	1	Metrotech	\$8	\$40	\$160	\$640	\$600
Photo ionization detector	7	TEI & Thermo Scientific OVM 580B	\$16	\$80	\$320	\$1,360	\$4,500
Flame Ionization Detector	0	Rented	N.A.	N.A.	N.A.	N.A.	N.A.
Multi-gas Meter (specify type)	1	Multi-RAE Plus 5-gas meter	\$10	\$50	\$200	\$800	\$1,300
Landfill Gas Meter	0	Rented	N.A.	N.A.	N.A.	N.A.	N.A.
Core Drill	0	Rented	N.A.	N.A.	N.A.	N.A.	N.A.
Hammer Drill	2	Kango & Bosch	\$15	\$75	\$300	\$1,200	\$1,900
Manometer	0	Rented	N.A.	N.A.	N.A.	N.A.	N.A.
Survey equipment (specify type)	1	Leitz Automatic C3E	\$8	\$40	\$160	\$640	\$800
Utility class vehicles: (includes cargo vans and trucks)	5	2003 Dodge Ram Truck 2007 Dodge Truck 2011 Ford Transit Van 2006 Ford Econoline Van 1999 Ford E150 Econovan	\$30	\$150	\$600	\$2,400	\$31,191 \$25,841 \$24,389 \$23,500 \$20,650
Transport Class Vehicles: (includes passenger cars, pick up trucks and passenger vans)	2	2004 Volkswagen Jetta	Specify Mileage rate only: <b>\$0.55</b>	N/A	N/A	N/A	N/A

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
ADDITIONAL SPACE IS PROVIDED FOR EQUIPMENT THAT THE PROPOSER ANTICIPATES USING ON A <b>REGULAR</b> BASIS.							
Water Level Indicator	7	Keck & Slope Indicator	\$4	\$20	\$80	\$320	\$800
Interface Probe	5	ORS & Marine Moisture	\$10	\$50	\$200	\$800	\$1,000
pH/Conductivity Meter	1	YSI	\$5	\$20	\$80	\$320	\$510
Dissolved Oxygen Meter	1	YSI 55	\$6	\$30	\$120	\$480	\$675
Turbidity Meter	1	Micro TPI	\$5	\$25	\$100	\$400	\$985
YSI Multi Probe Meter	3	YSI 556A	\$15	\$75	\$300	\$1,200	\$2,300
Drawdown/Water Level Meter	1		\$6	\$30	\$120	\$480	\$900
12V S.S. Submersible Pump	2	Grundfos Rediflow2	\$10	\$50	\$200	\$800	\$3,500
Suction Pump	3	Honda G100 & G110	\$8	\$40	\$160	\$640	\$1,400
Peristaltic Pump	4	GeoTech	\$8	\$40	\$160	\$640	\$1,000
Compressor	1		\$10	\$50	\$200	\$800	\$2,500
Generators	3	Honda Generac	\$10	\$50	\$200	\$800	\$2,000 \$3,500
Soil Gas Survey Equipment	1	AMS soil gas kit & rods	\$24	\$120	\$480	\$1,920	\$2,530
Air Sampling Pump	2	SKC 224-PCXR7	\$4	\$20	\$80	\$250	\$250
Hand Auger	4		\$5	\$25	\$100	\$400	\$512
Hand-held Air Sampling Pump	2	Draeger & Sensidyne	\$2	\$10	\$40	\$160	\$405
Well Development Kit	1	includes wale pumps, bailers, pH probe, conductivity probe, Honda pump, water level indicator	\$20	\$100	\$400	\$1,600	
Low Flow Sampling Kit	1	includes multi-probe meter, turbidity meter, flow thru cell, pump, water level indicator	\$30	\$150	\$600	\$2,400	
Soil Sampling Kit	1	includes hand augers/soil probes, slide hammer, jack, OVM meter	\$20	\$100	\$400	\$1,600	
Soil Gas Sampling Kit	1	includes hammer, drill generator, slide hammer, probes, air pump, OVM	\$50	\$250	\$1,000	\$4,000	
Power Boat (14') with Trailer	1	1992 Alumacraft & 2008 Long Boat trailer	\$10	\$50	\$200	\$800	\$2,677
Dust Meter	1	2009 Thermo Scientific PDR-1000AN	\$6	\$30	\$120	\$480	\$4,128
iPad GPS Units	2	iPad	\$5	\$25	\$100	\$400	\$600
Trimble GPS Unit	1	Trimble GeoXT	\$8	\$40	\$160	\$640	\$9,975
Sokkia GPS Unit	1	Sokkia Axis 3	\$10	\$50	\$200	\$800	\$7,600

PROPOSER: GZA GeoEnvironmental, Inc.

**Labor Rates**

<b>Title/Class (GZA Code)</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Biologist (Project) (20)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>5</u> .	\$90	\$90
Biologist (Senior) (12)	See Biologist Specify minimum years of experience <u>10</u> .	\$105	\$105
Cartographer/GIS Specialist (25, 30, 55)	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$90	\$90
Chemist (Project) (25)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience <u>5</u> .	\$90	\$90
Chemist (Senior) (12)	See Chemist Specify minimum years of experience <u>10</u> .	\$105	\$105
Draftsperson (55)	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$90	\$90
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	Subcontracted	Subcontracted
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	Subcontracted	Subcontracted
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.). (11)	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>15</u> and specialty. Civil/Environmental/Chemical	\$160	\$160

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.). (1, 2, 5)	See Professional Engineer Specify minimum years of experience <u>20</u> and specialty. Civil/Environmental/Chemical	\$190	\$190
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.). (25)	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>5</u> and specialty. Civil/Environmental/Chemical	\$90	\$90
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.). (12)	See Engineer Specify minimum years of experience <u>10</u> and specialty. Civil/Environmental/Chemical	\$125	\$125
Expert Witness (1, 2, 5)	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>20</u> and specialty. Environmental	\$190	\$190
Field Technician (26)	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$75	\$75
Geologist project (25)	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	\$90	\$90
Geologist senior (12)	See geologist Specify minimum years of experience <u>10</u> .	\$105	\$105

<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Hydrogeologist Project (25)	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	\$90	\$90
Hydrogeologist Senior (11)	See Hydrogeologist Specify minimum years of experience <u>15</u> .	\$160	\$160
Industrial Hygienist (11)	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$160	\$160
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	Subcontracted	Subcontracted
Licensed Environmental Professional (1, 2, 5)	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$190	\$190
Wetland /Soil Scientist project (12)	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience <u>15</u> .	\$125	\$125
Wetland /Soil Scientist Senior (1, 2, 5)	See Wetland /Soil Scientist Specify minimum years of experience <u>20</u> .	\$190	\$190
Risk Assessor (11)	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$160	\$160
Clerical Staff (90)	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$65	\$97.50
Project Manager (11)	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>12</u> .	\$160	\$160
Technical Expert (provide specialty) (11, 13)	Provide description Specify minimum years of experience <u>15</u> and specialty. Hydrogeology, Geology, Environmental & Geotechnical Engineering, Site Characterization, Regulatory Specialist, Remedial Design	\$160	\$160

PROPOSER: GZA GeoEnvironmental, Inc.

**Proposed and or additional labor not previously specified**

Title/Class (GZA)	Job Tasks	Straight Time	Overtime
Sr. Principal/Principal (1, 2)	Primary responsibility for project completion. Lead Scientist, or Engineer typically with 25+ years experience. Can sign as project PE or LEP as appropriate. Serves as internal QA/QC reviewer. May be company technical service lead in specialty.	\$190	\$190
Associate Principal (5)	Primary responsibility for project completion. Lead Scientist, or Engineer typically with 20+ years experience. Can sign as project PE or LEP as appropriate. Serves as internal QA/QC reviewer. May be company technical service lead in specialty.	\$190	\$190
Sr. Proj. Manager (11)	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Typically has 15+ years experience and holds PE or LEP license.	\$160	\$160
Project Manger (12)	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Typically has 10+ years experience.	\$125	\$125
Sr. Tech. Specialist (13)	Performs regulatory audits, provide trainings, prepares permit applications. Serves as a technical support role such as computer modeling, database management, risk assessment, etc. typically has 10+ years experience.	\$160	\$160
Asst. Project Manager (20)	Supervise field activities on more complicated projects, oversees project on-site. Assists PM in project coordination and subcontractor management.	\$105	\$105
Engineer/Scientist I (25)	Holds a bachelor's degree or higher in engineering or science (e.g. geology, hydrology, biology, chemistry, or environmental). Collects ground water samples, provides field support, uses, maintains and deploys equipment. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Typically can function with minimal supervision and has minimum of 3 years experience.	\$90	\$90
Engineer/Scientist II (26)	Holds a bachelor's degree or higher in engineering or science (e.g. geology, hydrology, biology, chemistry, or environmental). Collects ground water samples, provides field support.	\$75	\$75
CAD/Drafting/GIS (55)	Draws site plans, equipment layouts, and detailed drawings on CAD system. Prepares maps on the extent of spill, topography, etc. to be digitized.	\$90	\$90
Administrative/ Clerical (90, 91)	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$65	\$97.50



# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Haley & Aldrich, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012, by and between, Haley & Aldrich, Inc. (the “Contractor,”) with a principal place of business at 100 Corporate Place, Suite 105, Rocky Hill, CT 06067-1803, acting by Richard P. Standish, its Senior Vice President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims**: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmaturing, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency**: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information**: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach**: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017 The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of



Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
  - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
  - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
  - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
  - (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.
18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.
20. Delivery.
- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
  - (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
  - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
  - (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
  - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
  - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
  - (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
  - (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
  - (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
  - (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
  - (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates “motor vehicles,” as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles (“ConnDMV”) in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state’s or commonwealth’s applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator’s license or commercial driver’s license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

§ 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;



(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Haley & Aldrich, Inc.  
100 Corporate Place Suite 105  
Rocky Hill, CT 06067  
Attention Richard Standish

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract

and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.



45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought

pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client Agency.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or



(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Haley & Aldrich, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Richard P. Standish

Carol Wilson

Print or Type Name

Print or Type Name

Title: Senior Vice President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>HALEY &amp; ALDRICH, INC.</u>			
<b>Labor Rates</b>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>3</u> .	\$117	\$117
Biologist (Senior)	See Biologist Specify minimum years of experience <u>10</u> .	\$168	\$168
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$123	\$123
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience <u>3</u> .	\$117	\$117
Chemist (Senior)	See Chemist Specify minimum years of experience <u>10</u> .	\$168	\$168
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$111	\$111
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	N/A	N/A
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	N/A	N/A
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>5</u> and specialty.	\$154	\$154

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>10</u> and specialty.	\$207	\$207
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>5</u> and specialty.	\$142	\$142
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>10</u> and specialty.	\$195	\$195
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>10</u> and specialty.	\$325	\$325
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$99	\$99
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>3</u> .	\$117	\$117
Geologist senior	See geologist Specify minimum years of experience <u>10</u> .	\$168	\$168

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	\$123	\$123
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>10</u> . <b>168</b>	\$168	\$168
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$154	\$154
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	N/A	N/A
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$181	\$181
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience <u>3</u> .	\$117	\$117
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>10</u> .	\$168	\$168
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$168	\$168
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$77	\$77
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>10</u> .	\$168	\$168
Technical Expert (provide specialty)	Provide description Specify minimum years of experience <u>15</u> and specialty.	\$181	\$181

**EQUIPMENT USAGE AND BILLING FORM**

PROJECT: \_\_\_\_\_  
 FILE NO.: \_\_\_\_\_  
 PM: \_\_\_\_\_

DATE: \_\_\_\_\_  
 EQUIPMENT USER: \_\_\_\_\_  
 OTHER: \_\_\_\_\_

Equipment	H&A ID No.	Date Out	Date Returned	Time Used	Quantity Taken	Quantity Used	Current Rates		
							Day or Each	Week	Month
<b>Equipment - Air Monitoring</b>									
Gastec Sampling Kit							\$ 10	\$ 40	\$ 120
Gastec Tube (ea) - <b>Notice Required</b>							\$ 20	-	-
HCN Meter							\$ 20	\$ 80	\$ 240
Ludlum Radiation Survey Meter							\$ 35	\$ 140	\$ 420
Methane meter - GEM 2000							\$ 95	\$ 380	\$ 1,140
ppb RAE - <b>Notice Required</b>							\$ 85	\$ 340	\$ 1,020
PID - MiniRae 2000							\$ 70	\$ 280	\$ 840
PID - Thermo Env. 580							\$ 70	\$ 280	\$ 840
Q-Rae - Four Gas monitor							\$ 75	\$ 300	\$ 900
Thermo 680 FID - <b>Notice Required</b>							\$ 80	\$ 320	\$ 960
<b>Equipment - Water Sampling</b>									
7/16" OD Silicone Tubing (ft)							\$ 3.25	-	-
Tubing - Bladder Pump							\$ 1.50	-	-
Disposable Poly. Bailer							\$ 10	-	-
Disposable Teflon Bailer							\$ 20	-	-
Generator-Mini							\$ 25	\$ 100	\$ 300
Levelogger - Solinst							\$ 18	\$ 72	\$ 216
Levelogger - Barometric Pressure							\$ 8	\$ 32	\$ 96
Optical Reader (per project)							\$ 30	-	-
Pump - Centrifugal							\$ 27	\$ 108	\$ 324
Pump - D.C. Purging							\$ 27	\$ 108	\$ 324
Pump - Grundfos							\$ 80	\$ 320	\$ 960
Pump - Peristaltic							\$ 27	\$ 108	\$ 324
Remote Sampler							\$ 10	\$ 40	\$ 120
Stainless/Teflon Bailer							\$ 10	\$ 40	\$ 120
Stream Gauge							\$ 25	\$ 100	\$ 300
Water Level Indicator							\$ 12	\$ 48	\$ 144
Waterra Foot Valves (ea)							\$ 25	-	-
Waterra HDPE 3/8" Tubing (ft)							\$ 1	-	-
Waterra HDPE 5/8" Tubing (ft)							\$ 1	-	-
Waterra Metals Filter (ea)							\$ 22	-	-
<b>Equipment - Water Testing</b>									
Conductivity Meter							\$ 20	\$ 80	\$ 240
Dissolved Oxygen Meter							\$ 20	\$ 80	\$ 240
DO Meter - Down Hole							\$ 20	\$ 80	\$ 240
Hack Turbidity Meter							\$ 20	\$ 80	\$ 240
YSI 556							\$ 50	\$ 200	\$ 600
YSI 556 Flow-Cell							\$ 80	\$ 320	\$ 960
Oil - Water Interface Probe							\$ 40	\$ 160	\$ 480
ORP Meter							\$ 20	\$ 80	\$ 240
<b>Glassware</b>									
8 oz Drillers Jar							\$ 1	-	-
16 oz Jar							\$ 4	-	-
<b>Vehicles</b>									
Environmental Vehicles - Day							\$ 80		
Instrumentation Vehicles - Day							\$ 80		
<b>Equipment - PH</b>									
Petroflag TPH Kit (ea) - <b>Notice Required</b>							\$ 35		
Petroflag TPH Analyzer							\$ 30	\$ 120	\$ 360
pH Meter							\$ 15	\$ 60	\$ 180
pH paper (ea)							\$ 15		
Please note any problems experienced with the equipment:							<b>Total Billed</b> _____ <b>Reviewed By</b> _____ <b>Date</b> _____		



**EQUIPMENT USAGE AND BILLING FORM**

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

FILE NO.: \_\_\_\_\_

EQUIPMENT USER: \_\_\_\_\_

PM: \_\_\_\_\_

OTHER: \_\_\_\_\_

Equipment	H&A ID No.	Date Out	Date Returned	Time Used	Quantity Taken	Quantity Used	Current Rates		
							Day or Each	Week	Month
<b>Other</b>									
55 Gallon Drum							\$ 50		
Caution Tape							\$ 10	-	-
Dust Mask							\$ 2	-	-
Electrical Tape							\$ 1	-	-
Epoxy							\$ 25	-	-
Paper Towel							\$ 2	-	-
Tape - 100 or 300 ft							N/C	N/C	N/C
Alluminium Foil							\$ 2	-	-
Ziploc Bags							\$ 4	-	-
<b>PPE</b>									
Mask							\$ 200	-	-
Cartridges-GMC-H (pair)							\$ 60	-	-
Boot Covers Tyvek (pair)							\$ 1	-	-
Boot Covers PVC (pair)							\$ 7	-	-
Glove Liners-Cotton (pair)							\$ 2.0	-	-
Gloves-Inner Latex (box)							\$ 18	-	-
Gloves-Outer (pair)							\$ 6	-	-
Gloves-Winter (pair)							\$ 15	-	-
Saranex Coverall (ea)							\$ 20	-	-
Tyvek Coverall (ea)							\$ 10	-	-
Tyvek Hood (ea)							\$ 1	-	-
Tyvek Sleeve (ea)							\$ 1	-	-
<b>Equipment - Misc.</b>									
Absorption Pads (ea)							1.50	-	-
2" Soakease Pad (ea)							\$ 12	-	-
4" Soakease Pad (ea)							\$ 18	-	-
4" Soakease Screen (ea)							\$ 90	-	-
<b>Equipment - Decon</b>									
Decon. Equipment							\$ 45	-	-
Acetone							\$ 20	-	-
Hexane (liter)							\$ 30	-	-
Methanol (liter)							\$ 30	-	-
<b>Equipment - Field</b>									
Bucket (5 Gallon)							\$ 8	-	-
Lid for 5 gall bucket							\$ 2	-	-
Distilled Water							N/C	-	-
Duct Tape (roll)							\$ 6	-	-
Hard Hat							N/C	-	-
Locks							\$ 8	-	-
Orange Vest							N/C	-	-
Plastic Sheeting (roll)							\$ 15	-	-
Rope (200 ft)							\$ 30	-	-
Stainless Steel Bowl							N/C	-	-
Tongue Depressors							N/C	-	-
Drum Labels							\$ 1	-	-
<b>Equipment - Soil Testing</b>									
Core Sampler Liner (ea)							\$ 10	-	-
Field Test Meter-DTECHTOR							\$ 10	\$ 40	\$ 120
KV 1/4" OD Poly. Tubing (ft)							\$ 1		
Stainless Hand Auger							\$ 15	\$ 60	\$ 180
KV Sampling Tip (ea)							\$ 30		
PCB Analyzer-Dexsil L2000							\$ 40	\$ 160	\$ 480
Soil Core Sampler							\$ 25	\$ 100	\$ 300
AMS pcb's sampler							\$ 15	\$ 60	\$ 180
AMS 3" insert (each)							\$ 6		
Please note any problems experienced with the equipment:							<b>Total Billed</b> _____ <b>Reviewed By</b> _____ <b>Date</b> _____		

**EQUIPMENT USAGE AND BILLING FORM**

PROJECT: \_\_\_\_\_  
 FILE NO.: \_\_\_\_\_  
 PM: \_\_\_\_\_

DATE: \_\_\_\_\_  
 EQUIPMENT USER: \_\_\_\_\_  
 OTHER: \_\_\_\_\_

Equipment	H&A ID No.	Date Out	Date Returned	Time Used	Quantity Taken	Quantity Used	Current Rates		
							Day or Each	Week	Month
<b>Equipment - Geotechnical</b>									
GK-403 Vibrating Wire							\$ 25	\$ 100	\$ 300
Inclinometer Reading							\$ 25	Per Reading	
Radiation Survey Meter							\$ 35	\$ 140	\$ 420
Magnetic Extensometer - Sinco							\$ 25	\$ 100	\$ 300
Nuclear Density Gauge - Humboldt							\$ 80	\$ 320	\$ 960
Nuclear Density Gauge - Troxler							\$ 80	\$ 320	\$ 960
Pile Load Test - Extensometers							\$ 1,500	Per Test	
Pile Load Test - Conventional							\$ 2,500	Per Test	
Plate Load Test or CBR Eq.							\$ 50	\$ 200	\$ 600
Pneumatic Piezometer R. Box							\$ 30	\$ 120	\$ 360
Sound Meter - Datalogger							\$ 20	\$ 80	\$ 240
Sound Level Meter							\$ 15	\$ 60	\$ 180
Resistivity Meter-Bison							\$ 30	\$ 120	\$ 360
Saximeter							\$ 20	\$ 80	\$ 240
RB-100 Extensometer Readout							\$ 25	\$ 100	\$ 300
Theis Level with Rod							\$ 25	\$ 100	\$ 300
Theodolite							\$ 35	\$ 140	\$ 420
Tiltmeter							\$ 35	\$ 140	\$ 420
<b>Inclinometer Casing/Well Material</b>									
Road Boxes - 4" X 10" Aluminum							\$ 60	-	-
Road Boxes - 6" X 10" Aluminum							\$ 70	-	-
Road Boxes - 8" X 10" Aluminum							\$ 85	-	-
1" PVC Well Screen - 5' sections							\$ 18	-	-
1" PVC Riser - 5' sections							\$ 10	-	-
2" PVC Well Screen - 5' sections							\$ 20	-	-
2" PVC Riser - 5' sections							\$ 12	-	-
J-Plugs - 2 inch							\$ 8	-	-
Inclinometer Casing - 10 ft sections							\$ 70	-	-
Inclinometer - Bottom Cap							\$ 10	-	-
Inclinometer - Protective Cap							\$ 5	-	-
<b>Tape Extensometer</b>									
Tape Extensometer							\$ 15	\$ 60	\$ 180
<b>Surveying</b>									
Crack Gages (ea)							\$ 30	-	-
Flagging (White)							\$ 3	-	-
Flagging (Orange)							\$ 3	-	-
Spray Paint (White)							\$ 5	-	-
Spray Paint (Orange)							\$ 5	-	-
Spray Paint (Green)							\$ 5	-	-
Stainless Steel Settlement Points							\$ 3	-	-
Survey Stakes							\$ 2	-	-
3 ft. Stakes							\$ 2	-	-
<b>Equipment -Other</b>									
GEOKON CR-10 Data Logger							\$ 125	\$ 500	\$ 1,500
Single Channel Data Logger							\$ 100	\$ 400	\$ 1,200
Magnetometer: Omni 4 (EDA)							\$ 125	\$ 500	\$ 1,500
Metal Detector							\$ 20	\$ 80	\$ 240
Pressure Transducers							\$ 10	\$ 40	\$ 120
Rotary Hammer Drill-Bosch							\$ 50	\$ 200	\$ 600
Niton XRF							\$ 500	\$ 1,500	\$ 4,500
Infiltrometer - Double Ring							\$ 100	\$ 300	\$ 600
Cone penetrometer							\$ 50	\$ 100	\$ 300
Gas Chromatograph							\$ 100		
<b>Seismograph:</b>									
Seismograph							\$ 50	\$ 200	\$ 600
Please note any problems experienced with the equipment:							<b>Total Billed</b> _____ <b>Reviewed By</b> _____ <b>Date</b> _____		

**EQUIPMENT USAGE AND BILLING FORM**

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

FILE NO.: \_\_\_\_\_

EQUIPMENT USER: \_\_\_\_\_

PM: \_\_\_\_\_

OTHER: \_\_\_\_\_

Equipment	H&A ID No.	Date Out	Date Returned	Time Used	Quantity Taken	Quantity Used	Current Rates		
							Day or Each	Week	Month
<b>Deep Water Sampling</b>									
Solinst TLC 300' probe							\$ 90	\$ 270	\$ 540
WLI 1000' tape							\$ 40	\$ 160	\$ 320
WLI 500' tape							\$ 25	\$ 80	\$ 240
WLI 300' tape							\$ 20	\$ 70	\$ 200
Discrete sampler 500' depth							\$ 70	\$ 210	\$ 420
Bladder Pump							\$ 120	\$ 450	\$ 1,200
Bladder							\$ 9		
Coupled Tubing (ft)							\$ 2		
Boat - flat bottom							\$ 50	\$ 200	\$ 600
Trolling motor with battery							\$ 30	\$ 120	\$ 360
Bladder Pump kit							\$ 40		
Colorimeter							\$ 20	\$ 80	\$ 240
Dyes - Tracing (each)							\$ 60		
<b>Weather Stations</b>									
HOBO - remote setup. Datalogger							\$ 125	\$ 250	\$ 375
Hobo rain gauge							\$ 75	\$ 150	\$ 250
Weather Station - manual logging							\$ 30	\$ 120	\$ 360
<b>Other Equipment</b>									
Infiltrometer - Double Ring							\$ 150	\$ 600	\$ 1,200
Guelph Permeameter							\$ 100	-	-
<b>Air Sampling</b>									
Air Sampling Pump- SKC							\$ 22	\$ 88	\$ 264
Anemometer							\$ 20	\$ 80	\$ 240
Micromanometer - Infiltec							\$ 15	\$ 50	\$ 150
Magnahelic Gage							\$ 5	\$ 20	\$ 60
Gas Chromatograph - Photovac							\$ 250	\$ 1,000	\$ 3,000
Helium Gas (per day)							\$ 20	-	-
CO2 Monitor - Extech							\$ 25	\$ 100	\$ 300
Tedlar Bag							\$ 15	-	-
<b>Dust Monitoring</b>									
PDR - 1000-Personal Dust Monitor							\$ 25	\$ 100	\$ 300
Casella - Remote Dust Monitor							\$ 60	\$ 240	\$ 720
Thermo - Remote Dust monitor							\$ 60	\$ 240	\$ 720
<b>GPS (Global Positioning System)</b>									
TRIMBLE - satellite							\$ 80	\$ 320	\$ 960
MAGELLAN - handheld							\$ 25	\$ 100	\$ 300
Please note any problems experienced with the equipment:							<b>Total Billed</b> _____ <b>Reviewed By</b> _____ <b>Date</b> _____		

# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Leggette, Brashears & Graham, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012, by and between, Leggette, Brashears & Graham, Inc. (the “Contractor,”) with a principal place of business at 4 Research Drive, Suite 301, Shelton, CT 06484, acting by William K. Beckman, its Senior Vice President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims:** All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency:** Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information:** This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach:** This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (q) State: The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.
  - (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017. The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice.



Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.
8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the

Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.

11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.

12. Waiver.

- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

- (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying

out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (a) Perform fully under the Contract;
- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
- (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
- (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates “motor vehicles,” as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles (“ConnDMV”) in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state’s or commonwealth’s applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator’s license or commercial driver’s license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000

pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Leggette, Brashears & Graham, Inc.  
4 Research Drive Suite 301  
Shelton, CT 06484

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary
- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those

provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.

46. Contractor Responsibility.

- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the

availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client Agency.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide



an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Leggette, Brashears & Graham, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

William K. Beckman

Carol Wilson

Print or Type Name

Print or Type Name

Title: Senior Vice President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>Leggette, Brashears &amp; Graham, Inc.</u>			
MATERIAL COSTS			
	Materials	Units	Unit Price \$0.00
	Bio-Indicator Ampules (NO3, Fe.SO4 or HS	Each	10.50
	Dissolved Oxygen Ampules	Each	10.50
	Expansion Caps	Each	11.50
	Enviro Caps	Each	15.60
	Polyethylene Bladders	Units	12.00
	Polyethylene 1/4" & 3/8" Tubing	Feet	2.00
	Sorbent Sock - 1 Foot	Units	2.00
	6" Manhole Cover Seal	Units	2.40
	80 # Concrete	Bags	9.00
	ORC Sock	Units	75.00
	Ice (1 lb. bag)	Bags	2.00
	Absorbent Pads 18"x3"	Units	0.50
	Vapor Probe Tips	Units	20.00
	Chloride Field Test Kit	Units	7.50
	Sorbent Sock	Each	5.00
	3" Product-Adsorbing Sock	Each	3.00
	4" Product-Adsorbing Sock	Each	4.00
	Tedlar Bags	Each	12.50
	Deionized Water	Gallon	2.00
	Water Filters	Unit	22.00
	String	Roll	8.00
	Rope	Foot	0.20
	Plastic Sheeting	Sq. Foot	1.15
	Sand	Bag	5.00
	Master Locks	Unit	10.00
	American Lock	Lock	22.00
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>Leggette, Brashears &amp; Graham, Inc.</u>			
MATERIAL COSTS			
	Materials	Units	Unit Price \$0.00
	2" Well Cap	Unit	14.00
	Check Valves	Each	20.00
	4" Well Cap	Unit	17.00
	6" Well Cap	Cap	22.00
	Tygon Tubing	Foot	2.30
	C-Flex Tubing	Foot	3.00
	Vinyl Tubing	Foot	1.30
	Teflon Tubing 1/4 "	Foot	1.60
	5 - Gallon Bucket	Unit	5.00
	Poly Pipe	Foot	0.25
	Shelby Tube	Unit	10.00
	Sediment Gradation/Hydrometer Equipment	Sample	10.00
	Tubing 1/4 inch	Foot	0.30
	In Well Oil Adsorbant Pads	Pad	5.00
	VOC Tips	Each	1.00
	Silicone Tubing Masterfles 2,900ml/min-36	Foot	5.52
	Silicone Tubing Masterflex. 1,700ml/min-24	Foot	3.15
	Silicone Tubing Masterflex. 1,000ml/min-17	Foot	1.21
	Poly Tubing 5/8" OD x 1/2" ID	Foot	0.42
	Poly Tubing 1/2" OD x 3/8" ID	Foot	0.30
	Poly Tubing 3/8" OD x 1/4" ID	Foot	0.30
	Mason Jars	Case	4.54
	Waterra Tubing	Foot	0.25
	Piezometer	Each	125.00
	Grade Stakes	Each	1.00
	Helium Tank (rental)	Each	50.00
	Hach Kit - Colorimetric	Unit	10.00
	Grain-Size Analysis (Sieve)	Sample	75.00
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>Leggette, Brashears &amp; Graham, Inc.</u>			
MATERIAL COSTS			
	Materials	Units	Unit Price \$0.00
	BARTS Kit	Bottle	15.00
	In-Line Filters	Each	10.00
	Swagelok Fittings	Each	25.00
	GAC Canister	Each	575.00
	2" Pre-pack Well Screens	Each	95.00
	PetroFlag Test	Unit	20.00
	Encore Sampler (5 gram)	Unit	10.00
	Encore Sampler (25 gram)	Unit	10.00
	4" PVC Inside Cutter	Unit	18.00
	2" PVC Inside Cutter	Unit	15.00
	Soil Syringe	Unit	0.75
	MC - Liners with Catchers	Unit	9.00
	Screen Points	Unit	10.54
	1" Grippers	Unit	7.00
	Macrocore Liner & Catchers	Unit	9.00
	Disposable Tubing - Twin PE (1/4 1/4)	Foot	3.00
	Oil Absorbant Booms	Each	180.20
	Polyethylene Vapor Implant	Each	20.00
	Grab Plates for Bladder Pump	Each	4.00
	Confined Space Blower	Day	60.00
	Teflon Disposable Bailers	Each	8.00
	Polyethylene Bailers - small	Each	5.00
	Polyethylene Bailers - large	Each	9.00
	Teflon disposable bailers - large	Each	19.00
	Bailers, Poly, 3 Foot	Each	6.50
	Water Filters	Each	16.25
	High Capacity In-Line Filter	Each	16.00
	Absorbent blanket	Roll	140.00
	Absorbent pans, min 40 bales	Bale	85.00
	Absorbent pillows, Minimum 20 bales	BALE	\$96.00
	Absorbent sweep	BALE	\$90.00
	Absorbent, granular, Speedi Dry, minimum 40 bags	50 LB Bag	\$15.00
	Acid and Base Neutralizer Liquid	GALLON	\$15.00
	Acid and Base Neutralizer Powder	GALLON	\$25.00
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>Leggette, Brashears &amp; Graham, Inc.</u>			
MATERIAL COSTS			
	Materials	Units	Unit Price \$0.00
	Activated Carbon Filter, replacement	EACH	\$700.00
	Activated Carbon for restocking	LB	\$1.25
	Activated Carbon (30 gal Drum)	EACH	\$700.00
	Activated Carbon (55 gal Drum)	EACH	\$700.00
	Bailers, Disposable	EACH	\$5.80
	Bentonite	50 LB Bag	\$21.00
	Blowers, Replacement	EACH	\$500.00
	Boom, Double Absorbent, 5"x10', minimum of 20 bales	BALE	\$125.00
	Boom, Rubberizer	FOOT	\$12.00
	Boom, Sorbent 5"x10', minimum 20 bales	BALE	\$105.00
	Boom, Sorbent 8"x10', minimum 20 bales	BALE	\$180.00
	Chemical Specific Tubes (i.e. for Drager Pump)	EACH	\$10.00
	Chemical Specific Chips (i.e. for Drager Meter)	EACH	\$15.00
	Chlorine "A" Kit (150 lb)	EACH	\$300.00
	Chlorine "B" Kit (1 ton)	EACH	\$300.00
	Coupling/Fittings, 2" Steel	EACH	\$5.00
	Coupling/Fittings, 4" PVC	EACH	\$5.00
	Coupling/Fittings, 4" Steel	EACH	\$15.00
	Coupling/Fittings, 6" PVC	EACH	\$15.00
	Coupling/Fittings, 6" Steel	EACH	\$35.00
	Coupling/Fittings, 2" PVC	EACH	\$3.00
	Drum Thief, Glass 3/8"	EACH	\$5.50
	Drum, 110 Gal Steel Over-pack	EACH	\$195.00
	Drum, 30 Gal Poly	EACH	\$42.00
	Drum, 30 Gal Steel	EACH	\$40.00
	Drum, UN#1A1X1.8-300 (18 gauge steel bung 55 gal.)	EACH	\$50.00
	Drum, UN#1A2X423S (16-18 gauge steel 55 gal. ring top)	EACH	\$50.00
	Drum, UN#1A2X430S (16 gauge steel open head 55gal.)	EACH	\$50.00
	Drum, UN#1A2X435 Overpack (85 gal. steel salvage)	EACH	\$160.00
	Drum, UN#1H1Y1.8-300 (Poly Bung 55 gal.)	EACH	\$51.00
	Drum, UN#1H2X340S Overpack (95 gal poly overpack)	EACH	\$195.00
	Drum, UN#1H2Y237S (Poly open head 55 gal.)	EACH	\$51.00
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>Leggette, Brashears &amp; Graham, Inc.</u>			
MATERIAL COSTS			
	Materials	Units	Unit Price \$0.00
	Liners - Drum Poly ,6 mil	ROLL	\$100.00
	Liners, Roll-Off Container	ROLL	\$65.00
	Mercosorb	LB	\$40.00
	PH Paper Universal Pack 0-14	PK	\$21.00
	Pipe Casing, 8" Protective	LINEAR FT.	\$62.00
	Piping, 2" PVC, including all couplings and fittings	LINEAR FT.	\$1.75
	Piping, 2" Slotted PVC, including all couplings and fittings	LINEAR FT.	\$15.00
	Piping, 4" PVC , including all couplings and fittings	LINEAR FT.	\$4.25
	Piping, 4" Slotted PVC , including all couplings and fittings	LINEAR FT.	\$21.50
	Piping, 6" PVC , including all couplings and fittings	LINEAR FT.	\$81.00
	Plug and Patch Materials	PREMIXED 1 LB	\$16.00
	Riser, 1" PVC	FT	\$2.50
	Riser, 1/2" PVC	FT	\$2.50
	Riser, 1-1/4" PVC	FT	\$9.38
	Riser, 3/4" PVC	FT	\$5.00
	Poly Sheets	ROLL	\$110.00
	Screen, 3/4" PVC Slotted	FT	\$3.00
	Screen, Slotted, 1" PVC	FT	\$3.25
	Macrocore liners	Each	\$10.00
	Tracer Dye	CAN	\$15.00
	Well Cover, 5"	EACH	\$100.00
	Well Cover, 7"	EACH	\$157.00
	Well Covers, 12"	EACH	\$225.00
	Cement/Bentonite Grout	FT of Well	\$4.00
	4" x 5' stand pipe	Each	\$150.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: : <u>Leggette, Brashears &amp; Graham, Inc.</u>							
<b>EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)</b>							
Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	3	Mobile Diller B-53	\$100	\$800	\$4,000	\$16,000	\$250,000
Direct push drill rig (indicate size and type)	3	Geoprobe 54 DT track mounted, Geoprobe 6620 track mounted, Geoprobe 6610 track mounted	\$90	\$720	\$3,600	\$14,400	\$195,000
Flow through cell and data analyzer for low flow sampling (specify type)	4	YSI Model 6820	\$12.50	\$100.00	\$300.00	\$900.00	\$7,406
Magnetometer							
XRF	2		\$40.00	\$300.00	\$500.00	\$1,800.00	
Metal detector							
Photo ionization detector	4	MiniRae 2000, MiniRae Plus	\$11.25	\$90.00	\$270.00	\$810.00	\$4,620
Flame Ionization Detector	1	MSA CGI Model 361	\$13.75	\$110.00	\$330.00	\$990.00	
Multi-gas Meter (specify type)	1	MSA CGI Model 361	\$13.75	\$110.00	\$330.00	\$990.00	
Landfill Gas Meter	1	MSA CGI Model 361	\$13.75	\$110.00	\$330.00	\$990.00	
Core Drill	1	Bosch	\$6.25	\$50.00	\$150.00	\$450.00	
Hammer Drill	1	Bosch	\$6.25	\$50.00	\$150.00	\$450.00	
Manometer	1	Alnor 560	\$12.50	\$100.00	\$300.00	\$900.00	\$1,800

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Survey equipment (specify type)	2	Topcon AT-G7 auto level	\$6.25	\$50.00	\$150.00	\$450.00	\$1,100
Utility class vehicles: (includes cargo vans and trucks)	8	Various Ford F-250 F-350	\$15.00	\$105.00	\$420.00	\$4,200.00	Various
Transport Class Vehicles: (includes passenger cars, pick up trucks and passenger vans)	6	Ford Explorer/Dodge Dakota,Ford Windstar/Others	\$0.555	N/A	N/A	N/A	N/A
ADDITIONAL SPACE IS PROVIDED FOR EQUIPMENT THAT THE PROPOSER ANTICIPATES USING ON A <b>REGULAR</b> BASIS.							
ATV Drill Rig	1	CME 550 X Rubber Tired ATV	\$150	\$1,200	\$6,000	\$24,000	\$275,000
Skid mounted drill rig	1	Simco 2400	\$100	\$800	\$4,000	\$16,000	\$250,000
Track mounted Drill Rig	1	Mobile Drill B-53	\$100	\$800	\$4,000	\$16,000	\$250,000
Turbidity Meter	1	Turbidimeter 8391-40	\$3.75	\$30.00	\$90.00	\$270.00	\$850
pH Meter	2	SPER Scientific Model 840035	\$1.85	\$15.00	\$45.00	\$135.00	
Dust Monitor	1	Hand-held/real-time/MIE	\$13.75	\$110.00	\$330.00	\$99.00	
Dissolved Oxygen Meter	1		\$3.15	\$25.00	\$75.00	\$225.00	
Dissolved Oxygen Meter, Extended Range	1		\$5.65	\$45.00	\$135.00	\$405.00	
Horiba - Multi-Function Analyzer	1	Horiba U-22	\$12.50	\$100.00	\$300.00	\$900.00	\$4,990
(LEL)/Oxygen Meter	1		\$6.25	\$50.00	\$150.00	\$450.00	
Oil/Water Interface Tape	2	In-Situ 100 ft	\$6.87	\$55.00	\$165.00	\$495.00	
Electric Water-Level Indicator	14	Electric tapes	\$2.50	\$20.00	\$60.00	\$180.00	
Electric Water Level Indicator - Long	2	M Scope	\$6.25	\$50.00	\$150.00	\$450.00	
In-Well Data Logger/Transducer	9	In-Situ MiniTroll	\$9.37	\$75.00	\$225.00	\$500.00	
Stream Flowmeter	1	Global Water FP101/Pigmi	\$5.00	\$40.00	\$120.00	\$360.00	
ORP Meter	1		\$1.25	\$10.00	\$30.00	\$90.00	
Magnehelic Gauges	10	Dwyer (various ranges)	\$1.25	\$10.00	\$30.00	\$90.00	\$350
Air Velocity Meter	1	YSI	\$9.37	\$75.00	\$100.00	\$300.00	
GPS Receiver	1	Magellan Merifian Gold GPS	\$2.50	\$20.00	\$60.00	\$180.00	\$900
Low-Flow Sampling Pump	1	Waterra	\$9.37	\$75.00	\$225.00	\$675.00	\$4,000
Bladder Pump	1	Waterra	\$6.25	\$50.00	\$150.00	\$450.00	\$1,000
Peristaltic Pump	4	Geopump	\$3.12	\$25.00	\$75.00	\$225.00	

**12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES**

**EXHIBIT B PROPOSAL SCHEDULE**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Jon Boat	1		\$9.37	\$75.00	\$225.00	\$675.00	\$1,750
EM-31 Instrument & Recorder	1	EM-31	\$12.50	\$100.00	\$300.00	\$900.00	
Trimble GeoXH (GPS)	1	Trimble GeoXH	\$18.75	\$150.00	\$450.00	\$1,350.00	
Trimble GeoXH (Transducers)	1	Trimble GeoXH	\$6.25	\$50.00	\$150.00	\$450.00	
Trimble GeoXH (GPS/Transducer)	1	Trimble GeoXH	\$25.00	\$200.00	\$600.00	\$1,800.00	
Downhole Video Logger	1	GEOVision micro M3	\$62.50	\$500.00	\$1,500.00	\$4,500.00	\$9,000
Down Hole Video	1		\$34.37	\$275.00	\$825.00	\$2,475.00	\$15,000
Borehole Geophysical Logger	1	MGX Mount Sopris Instrument Co.	\$50.00	\$400.00	\$1,200.00	\$3,600.00	\$8,000
Trimble submeter GPS	1	Trimble	\$22.50	\$180.00	\$540.00	\$1,620.00	\$5,000
Boat , Draft (min. 14') , includes trailer & motor (15hp min.)*	2	aluminum flat bottom	\$15.00	\$120.00	\$480.00	\$1,440.00	
Boom Trailer (for 1000' Hard Boom, Min 6"skirt)	2	various trailers loaded	\$15.00	\$105.00	\$420.00	\$1,260.00	\$7,100
Confined Space Equipment (price as a unit)	2	various tripods/winch	\$10.00	\$80.00	\$320.00	\$1,000.00	\$6,300
Dump Truck(s) , Specify Size(s)	2	f-350 super duty	\$35.00	\$245.00	\$980.00	\$2,940.00	
Large motorboat (min.20' trailer & motor incl.)	1	Carolina skiff-20' boat	\$30.00	\$240.00	\$960.00	\$2,880.00	
Rack truck	1	F450 with liftgate	\$22.00	\$154.00	\$616.00	\$2,464.00	
Response Van or Trailer	2	25 ft box/response vehicle	\$25.00	\$175.00	\$700.00	\$2,100.00	\$150,000
Site trailer (for storing or securing equipment)	1	various sizes	\$20.00	\$140.00	\$420.00	\$1,260.00	\$27,000
Super Vac – Minimum 2500 gallon w/accessories	3	cusco/pressvac-3000g cap	\$80.00	\$560.00	\$2,240.00	\$6,720.00	
Vacuum Truck, Min. 3000 gal. w/ accessoried	2	Peterbilt 4k triaxle.	\$70.00	\$480.00	\$1,920.00	\$5,760.00	
Vacuum Trailer/Tanker, Min. 5000 gal.min. w/ acces.	1	freightliner with 6000 tank	\$70.00	\$480.00	\$1,920.00	\$5,760.00	
Bob-Cat /Skid Steer w/broom sweeper attach. or equiv.	2	7000 lb machine	\$20.00	\$140.00	\$560.00	\$1,680.00	
Bulldozer	1	12000 lbs machine	\$35.00	\$245.00	\$980.00	\$1,960.00	
Excavator	2	17200-42000 lbs machine	\$50.00	\$350.00	\$1,400.00	\$4,200.00	
Loader	1	asv track loader, 12000 lbs	\$40.00	\$280.00	\$1,120.00	\$3,360.00	
Mini Excavator	1	kubota, 7300 lbs	\$35.00	\$245.00	\$980.00	\$1,960.00	
Roll-of container (minimum of 3)	15	20, 25, 30 cyard containers	\$2.00	\$20.00	\$80.00	\$300.00	\$35,000
Roll-off truck	4	(3) peterbilt straight (1) trailer	\$45.00	\$315.00	\$1,260.00	\$3,780.00	
Activated carbon filters (specify gpm)	10	10 gpm carbtrol		\$80.00	\$320.00	\$960.00	\$900
Air stripper system (inclusive of all components)	4	10-100 gpm		\$50.00	\$600.00	\$1,800.00	\$27,000
Automatic petroleum recovery system (inclusive)	4	24' filter scavenger		\$100.00	\$400.00	\$1,200.00	\$9,200

**12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES**

**EXHIBIT B PROPOSAL SCHEDULE**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Centrifugal pump (specify gpm)	4	4' 700 gpm various	\$40.00	\$300.00	\$1,200.00	\$3,600.00	
Frac Tank	5	21,000 gallon		\$50.00	\$200.00	\$600.00	\$36,000
Double Diaphragm pump (specify gpm)	4	2' welden 175 gpm		\$240.00	\$960.00	\$2,880.00	
Oil/water separator (specify gpm)	4	50 gpm and 30 gpm		\$112.00	\$448.00	\$1,344.00	\$9,800
Recovery tank (skid tank) 1000 gallon	2	steel	\$16.70	\$133.00	\$532.00	\$1,596.00	\$3,200
Recovery tank (skid tank) 275 gallon	2	steel	\$5.40	\$43.00	\$172.00	\$516.00	\$1,350
Recovery tank (skid tank) 500 gallon	2	steel	\$12.75	133.00	532.00	1,596.00	3,800
Soil gas survey equipment	1		\$16.70	\$75.00	\$275.00	\$500.00	
Soil vapor extraction blower system (inclusive)	2	130 cfm		\$135.00	\$540.00	\$1,620.00	\$2,500
Submersible pump (specify gpm)	8	66 gpm		\$100.00	\$400.00	\$1,200.00	\$675
Water table depression pump (specify gpm)	2	60 gpm		\$120.00	\$480.00	\$1,440.00	\$5,100
Air compressor (specify psi)	2	185 ingersoll 225 psi	\$30.00	\$250.00	\$1,000.00	\$4,000.00	\$12,000
Blower (specify cfm)	2	100 CFM	\$7.50	\$60.00	\$240.00	\$960.00	\$2,300
Brush cutter/weed whacker	4	8" TROY	\$5.75	\$40.00	\$200.00	\$800.00	\$600
Chemical Hose (non standard for petroleum recovery)	150'	2" CHEM HOSE PUMA	\$2.50	\$25.00	\$300.00	\$1,000.00	\$950
Emergency lights for night work (Light Tower)	2	JETLIGHT 50 TO 500 WATT	\$20.00	\$200.00	\$400.00	\$1,000.00	\$10,000
Explosion proof fans	2	VARIOUS	\$12.00	\$100.00	\$500.00	\$1,500.00	\$2,500
Generator (specify kw)	6	VARIOUS	\$20.00	\$160.00	\$800.00	\$3,200.00	\$7,800
Hard Boom – MW. 6" Skirt (minimum 1000') in trailer)	4	50 Foot sections		\$1,000.00	\$4,000.00	\$7,000.00	\$6,000
Jack hammer	4	165 cfm	\$15.00	\$110.00	\$550.00	\$2,000.00	\$650
Mercury Vacuum	4	nilfisk	\$75.00	\$500.00	\$2,000.00	\$7,000.00	\$5,000
Pneumatic power equipment (Specify)	3	drills scraper	\$30.00	\$120.00	\$380.00	\$1,520.00	\$1,200
Power Broom (minimum of 4)	6	sthils	\$10.00	\$50.00	\$200.00	\$800.00	\$1,000
Power washer (specify psi)	5	2000-5000 VARIOUS	\$10.00	\$100.00	\$500.00	\$2,000.00	\$1,600
Remotely Operated Camera	1	SEA SNAKE	\$125.00	\$800.00	\$3,200.00	\$5,000.00	\$3,600
Skimmer	10	2" ELASTEC	\$30.00	\$300.00	\$1,200.00	\$4,000.00	
High flow air pumps for ACM	4		\$1.00	\$5.00	\$25.00	\$100.00	
Personal Pumps for ACM	6		\$2.00	\$10.00	\$50.00	\$180.00	
Q-Track	1		\$12.00	\$100.00	\$300.00	\$1,000.00	
Bio-Aerosol Pump	2		\$12.00	\$100.00	\$300.00	\$1,000.00	



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: : <u>Leggette, Brashears &amp; Graham, Inc.</u>			
<b>Labor Rates</b>			
Title/Class	Job Tasks	Straight Time	Overtime
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience ____.	NA	NA
Biologist (Senior)	See Biologist Specify minimum years of experience <u>20</u> .	\$125	\$125
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$100	\$100
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience ____.	NA	NA
Chemist (Senior)	See Chemist Specify minimum years of experience <u>15</u> .	\$95	\$95
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$75	\$110
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	\$65	\$85
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	\$50	\$70
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>5</u> and specialty.	\$100	\$100

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u> 8 </u> and specialty.	\$150	\$150
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u> 1 </u> and specialty.	\$75	\$75
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u> 5 </u> and specialty.	\$125	\$125
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u> 20 </u> and specialty.	\$175	\$175
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$60	\$90
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u> 1 </u> .	\$65	\$65
Geologist senior	See geologist Specify minimum years of experience <u> 5 </u>	\$125	\$125

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>1</u> .	\$65	\$65
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>5</u> .	\$125	\$125
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$125	\$187.50
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	\$110	\$110
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$175	\$175
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience _____.	NA	NA
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>20</u> .	\$125	\$125
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$125	\$187.50
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$55	\$55
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>12</u> .	\$150	\$150
Technical Expert (provide specialty)	Provide description Specify minimum years of experience <u>20</u> and specialty.	\$175	\$175

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: : <u>Leggette, Brashears &amp; Graham, Inc.</u>			
<b>Proposed and or additional labor not previously specified</b>			
Title/Class	Job Tasks	Straight Time	Overtime
Geophysical Survey Technician	Uses geophysical equipment to identify below-grade structures and utilities	\$75	\$75
Geophysical Survey Project Manager	Uses geophysical equipment to identify below-grade structures and utilities. Interprets geophysical data and prepares summary report..	\$75	\$75
Equipment Operator	Runs excavator, operates vacuum trucks, operates equipment, operates vehicles requiring Class 1 and 3 licenses	\$45	\$63
Foreman	Crew leader, supervises field activities, schedule personnel and equipment	\$45	\$63
Skilled Laborer	Performs the physical duties of the job	\$41	\$57.40
Survey Field Party Chief	Crew leader, supervised survey crew	\$80	\$120
Survey Field Crew/Technician	Field crew for survey	\$70	\$105
Asbestos Inspector	Conducted field surveys and collected samples of suspected asbestos-containing materials	\$65	\$65
Asbestos Management Planner	Prepared management plans for abatement of ACM	\$75	\$75
Asbestos Project Monitor	Monitors asbestos abatement projects	\$65	\$75
Asbestos Project Designer	Designs abatement programs for abatement projects	\$75	\$75
IAQ Hygenist	Collects samples for air monitoring during asbestos abatement projects	\$100	\$100
Engineer (Project-II) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>3</u> and specialty.	\$100	\$100
Field Technician - Senior	See Field Technician Specific minimum years of experience <u>4</u> and specialty.	\$75	\$112.5
Geologist project - II	See geologist Specify minimum years of experience <u>3</u> .	\$95	\$95
Hydrogeologist Project - II	See Hydrogeologist. Specify minimum years of experience <u>3</u> .	\$95	\$95

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: : <u>Leggette, Brashears &amp; Graham, Inc.</u>  <b>Proposed and or additional labor not previously specified</b>			
Title/Class	Job Tasks	Straight Time	Overtime
Certified Industrial Hygienist, Certified Hazardous Materials Manager, Certified Safety Professional, Certified Health Physicist	Has a bachelors or higher degree in an appropriate technical discipline and is certified by the board for this professional title	\$165	\$247.50

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# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Loureiro Engineering Associates, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 5, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012, by and between, Loureiro Engineering Associates, Inc. (the “Contractor,”) with a principal place of business at 100 Northwest Drive, Plainville, CT 06062, acting by Brian A. Cutler, its President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. **Definitions.** Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims:** All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency:** Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information:** This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach:** This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) Contract: The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) Awarded Contractor: A person or entity who submits a Proposal and who executes a Contract.
- (g) Contractor Parties: A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) Day: All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) Force Majeure: Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) Goods: For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) Goods or Services: Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) Proposal: A Proposer's submittal in response to a Request for Proposals.
- (m) Proposer Parties: A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) Records: All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) Request for Proposals: A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) Services: The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (q) State: The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.
  - (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017 The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the

terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.
8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the

Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.

11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.

12. Waiver.

- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

- (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying

out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (a) Perform fully under the Contract;
- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
- (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
- (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.



21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates “motor vehicles,” as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles (“ConnDMV”) in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state’s or commonwealth’s applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator’s license or commercial driver’s license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000

pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the



Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Loureiro Engineering Associates, Inc.  
100 Northwest Drive  
Plainville, CT 06062  
Brian Cutler

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract

and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought

pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.



(g) Definitions. For the purposes of this Section of the Contract:

- (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
- (2) “Business Associate” shall mean the Contractor or Contractor Parties.
- (3) “Covered Entity” shall mean the Client Agency.
- (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA Provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Loureiro Engineering Associates, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Brian A. Cutler

Carol Wilson

Print or Type Name

Print or Type Name

Title: President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES**

**EXHIBIT B PROPOSAL SCHEDULE**

<b>PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES</b>			
<b>FEIN/SSN: 06-0918334</b>			
<b>MATERIAL COSTS</b>			
	<b>MATERIALS</b>	<b>Units</b>	<b>Unit Price</b>
	Bailer, Disposable	Each	\$7.50
	Bentonite Granular Chips	Bags	\$14.00
	Bentonite Pellets	Pails	\$30.00
	Bentonite-Powder	Bags	\$14.00
	Binder	Each	\$10.00
	Boots-Latex	Pairs	\$8.00
	Cap, Slip-PVC	Each	\$0.60
	Cap, Slip-Vinyl	Each	\$0.50
	Cap, Threaded-PVC	Each	\$3.00
	Carbon Vessel, 1000#	Each	\$350.00
	Carbon Vessel, 500#	Each	\$250.00
	Coliwasa Tube/Disposable	Each	\$11.00
	Concrete-60lb Bag	Bags	\$4.00
	Connectors, Snap Lock	Each	\$18.00
	Drum-55 Gallon	Each	\$30.00
	Filter-Inline	Each	\$19.00
	Foot Valve	Each	\$12.00
	Gloves-Neoprene	Pairs	\$6.00
	Gloves-Nitrile	Boxes	\$15.00
	Gloves-Nitrile	Pairs	\$2.00
	Grout Mix	Bags	\$19.00
	GW Expendable Drive Points	Each	\$7.00
	Liner-Geoprobe Dual Tube DT22	Each	\$9.00
	Liner-Geoprobe Dual Tube DT325	Each	\$11.50
	Liner-Geoprobe Large Bore	Each	\$3.00
	Liner-Geoprobe Macro Core	Each	\$4.00
	Link Guard Kit	Each	\$165.75
	Locking Guard	Each	\$233.68
	Padlock-Monitoring Well	Each	\$18.00
	Point, Exp 1"	Each	\$9.50
	Point, Exp 2.25"	Each	\$25.00
	Point, Exp 3.25"	Each	\$28.00
	Sand	Bags	\$8.00
	Suit-Tyvek Perforated	Each	\$15.00
	Suit-Tyvek Saran Cocoon	Each	\$90.00
	Suit-Tyvek Saranex	Each	\$21.00
	Surge Block	Each	\$7.50
	Swagelok QC (Body)	Each	\$12.00
	Swagelok QC (Protector)	Each	\$5.00
	Swagelok QC (Stem)	Each	\$7.00
	Tedlar Bags	Each	\$10.00
	Thermometer-Digital	Each	\$10.00
	Tubing, 1/2"	Boxes	\$24.00
	Tubing, 3/8", 1/4"	Boxes	\$18.00
	Tyvek Coveralls	Each	\$8.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES</b>			
<b>FEIN/SSN: 06-0918334</b>			
<b>MATERIAL COSTS</b>			
	Vinyl End Cap	Each	\$0.75
	Water-Distilled	Gallons	\$2.00
	Water-Distilled	Boxes	\$11.00
	Well Plug, 2" Locking (expansion cap)	Each	\$25.00
	Well Point, 1" Sch.80 PVC	Each	\$11.00
	Well Protector Road Box, 4"	Each	\$46.00
	Well Protector Road Box, 8"	Each	\$63.00
	Well Riser, 0.5" PVC, 5'	Each	\$11.00
	Well Riser, 1" Sch 80 PVC, 5'	Each	\$13.00
	Well Screen, 1" Sch.80 PVC, 5'	Each	\$21.00
	Well Screen, Pre-Packed	Each	\$155.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES

EQUIPMENT RATES (includes overhead , i.e. taxes, fuel, maintenance, delivery)								
Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price	
Drill rig (indicate size and type)	1	Geoprobe Model 6610DT	\$130.00	\$1,000.00	\$4,200.00	\$12,600.00	\$126,000.00	
Direct push drill rig (indicate size and type)	1	Geoprobe Model 5400	\$99.00	\$700.00	\$3,000.00	\$9,000.00	\$89,000.00	
Direct push drill rig (indicate size and type)	1	Geoprobe Model 5400	\$99.00	\$700.00	\$3,000.00	\$9,000.00	\$92,000.00	
Flow through cell and data analyzer for low flow sampling (specify type)	3	Meter-Water Quality YSI 600 XL/Quattro	\$20.00	\$140.00	\$560.00	\$1,680.00	\$3,840.00	
Magnetometer	1	Metrotech	\$8.00	\$50.00	\$200.00	\$600.00		
XRF		Rental		\$330.00				
Metal Detector	1	Metrotech	\$8.00	\$50.00	\$200.00	\$600.00		
Photo ionization detector	5	Photovac HL 2000, PHOTOVAC F	\$14.00	\$90.00	\$375.00	\$1,000.00		
Flame ionization detector	1	Foxboro	\$15.00	\$105.00	\$420.00	\$1,260.00		
Multi-gas Meter (specify type)	5	Lantec or GEM w/o H2S Pod	\$17.00	\$115.00	\$460.00	\$1,380.00		
landfill Gas Meter	5	Lantec or GEM w/o H2S Pod	\$17.00	\$115.00	\$460.00	\$1,380.00		
Core Drill	2	Hilti	\$14.00	\$90.00	\$375.00	\$1,000.00		
Hammer Drill	4	Hilti/Dewalt/Milwaukee	\$8.00	\$50.00	\$200.00	\$600.00		
Manometer	1	Custom Built	\$14.00	\$90.00	\$375.00	\$1,000.00		
Survey Equipment (specify type)	2	Robotic	\$55.00	\$375.00	\$1,500.00	\$4,500.00	\$30,000.00	
Utility class vehicles: (includes cargo vans and trucks)	9	Ford Econoline 350, 1-ton; 8 Ford F-250 pickup trucks	\$9.00	60	250	750		
Transport Class Vehicles: (includes passenger cars, pick up trucks and passenger vans)	3	Form F-150 pickup trucks, Ford Range pickup truck	IRS maximum allowable for mileage					
ADDITIONAL SPACE IS PROVIDED FOR EQUIPMENT THAT THE PROPOSER ANTICIPATES USING ON A <b>REGULAR BASIS</b>								
Air Compressor	3	Thompson	\$7.00	\$50.00				
Air Monitoring Pump (SKC)	3	SKC	\$4.50	\$35.00				
Air Sampling Equipment	4	MSA Escort ELF 0.05 RO	\$6.00	\$45.00				
Air Tank Cylinder	Multiple	Various	\$3.00	\$20.00				
Auger, Hand w/Attachments	Multiple	2" and 4" With 5' Extensions	\$3.00	\$20.00				
Balance-Ohaus	Multiple	Ohaus	\$1.50	\$12.00				
Balance-Pocket Pro	Multiple	Pocket Pro	\$1.50	\$12.00				
CCTV Inspection System	1	Custom built	\$145.00	\$1,000.00				
Confined Entry System	2	Miller Intruder Model 142	\$11.00	\$75.00				
Cut-Off Saw	5	Stihl, Delmar	\$7.00	\$50.00				
Data Logger w/Transducer	1	Hermit 5 Channel	\$14.00	\$100.00				
Decon Shower	1	1 person portable	\$3.00	\$20.00				
Dredge Sampler	1	Stanless steel Forestry supplies	\$7.00	\$50.00				
Eye Wash Station	2	Portable	\$1.00	\$10.00				
Gas Probes-5' SS	Multiple	Stanless steel 5' probes	\$6.50	\$50.00				
Gauge-Magnehelic Vacuum	10	Magnehelic vacuum	\$1.50	\$12.00				
GC-Portable	1	Photovac 2020	\$130.00	\$1,000.00				
Generator	1	Caterpillar	\$110.00	\$750.00				
Generator-3500 Watt	2	Honda	\$8.00	\$60.00				
Geoprobe Interior Exhaust System	1	300 feet 3" high temperature	\$11.00	\$80.00				
GPS Unit	3	Garmin	\$14.00	\$100.00				
Headset-Voice Activated	3	Jobcom	\$1.50	\$12.00				
Innov-X-Analyer	1	Innov-X-Analyer	\$75.00	\$550.00				

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES

EQUIPMENT RATES (includes overhead , i.e. taxes, fuel, maintenance, delivery)							
Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Interface Probe	4	Solinst	\$8.00	\$60.00			
Laser Level with Target	1	David White Model ML 400	\$6.00	\$45.00			
Life Air System	1	Life Air	\$11.00	\$80.00			
Meter - Flo-Dar	1	Flow Dar	\$145.00	\$1,000.00			
Meter-02,CO,H2S,LEL (4-Gas)	4	4 gas	\$11.00	\$80.00			
Meter-Air Velocity	15	Dwyer Pitot Tubes	\$7.00	\$50.00			
Meter-CH4,CO2,O2 (3-Gas Lantec)	3	Lantec	\$11.00	\$80.00			
Meter-Combo pH & Conductivity	3	Oakton Combination meter	\$6.00	\$45.00			
Meter-Conductivity	2	Cole palmer	\$4.50	\$30.00			
Meter-Dissolved Oxygen	2	Cole palmer	\$4.50	\$30.00			
Meter-Dust PDR-1000 for Constructi	2	PDR 1000	\$11.00	\$80.00			
Meter-Dust PSI Dust Trac for Air Mt	3	PSI Dust Trac	\$17.00	\$120.00			
Meter-H2S Pod (Add On to Lantec M	2	Lantec	\$3.50	\$25.00			
Meter-Kestrel Weather	2	Kestrel	\$7.00	\$50.00			
Meter-Noise Dosimeter	1		\$7.00	\$50.00			
Meter-Omega Velocity	3	Omega	\$4.50	\$32.00			
Meter-Orion 250A Ph	1	Orian combination	\$5.00	\$35.00			
Meter-pH Temp	1	Orian combination	\$5.00	\$35.00			
Meter-Water Quality w/Flow Cell	1	YSI	\$20.00	\$150.00			
Meter-Water Quality YSI 63	1	YSI	\$8.00	\$60.00			
Meter-Water Velocity	1	Marsh McBirney	\$7.00	\$50.00			
Pressure Washer	4	Karcher 1,500 PSI or equivalent	\$11.00	\$80.00			
Probe Rod Jack	1	Geoprobe	\$5.00	\$40.00			
Pump, Grout	1	Geoprobe	\$15.00	\$105.00			
Pump, Inertia (Waterra)	2	Waterra	\$18.00	\$125.00			
Pump-Bladder w/ Accessories	5	Isco	\$18.00	\$125.00			
Pump-Centrifugal (Homelite)	3	Homelite	\$7.00	\$50.00			
Pump-Grundfos	3	Grundfos	\$18.00	\$125.00			
Pump-Peristaltic	5	Isco	\$11.00	\$80.00			
Pump-Submersible (Whale)	5	Whaler	\$1.50	\$12.00			
Pump-Trash	2	Northstar	\$14.00	\$100.00			
Road Saw	1	target 65 hp - w/blade	\$59.00	\$400.00			
Respirator Full w/Cartridge	10	Various	\$4.50	\$32.00			
Robotic Survey Instrument	2	Topcon	\$55.00	\$400.00			
Soil Gas Sampler	1	Custom built - Magnahelic	\$5.00	\$40.00			
Soil Gas Survey Equipment	1	Custom	\$11.00	\$80.00			
SVE System, Trailer-Mounted	1	10 hp with VFD in Haulmark Traile	\$360.00	\$2,500.00			
Traffic Safety Kit	1	Warning signs and markings	\$3.00	\$20.00			
Turbidimeter	3	Lamotte 2020	\$5.00	\$35.00			
Utility Trailer - 8'	1	Haulmark	\$2.00	\$15.00			
Utility Trailer- Haulmark 16'	1	Haulmark	\$25.00	\$180.00			
Water Level Indicator	Multiple	Slope Model 51453 or equal	\$1.50	\$12.00			

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES			
Title/Class	Job Tasks	Straight Time	Overtime
BIOLOGIST (PROJECT)	HAS A BACHELORS DEGREE OR HIGHER IN BIOLOGY, LIFE SCIENCES, BOTANY, FORESTRY, ZOOLOGY, ECOLOGY OR RELATED FIELD. PERFORMS AND SUPERVISES BIOLOGICAL SAMPLING AND SURVEYS, WATER, SOIL AND SEDIMENT SAMPLING TO EVALUATE THE EFFECT OF CONTAMINANTS ON PLANTS AND ANIMALS. PROVIDES TECHNICAL ASSISTANCE TO BIOREMEDIATION PROJECTS. SPECIFY MINIMUM YEARS OF EXPERIENCE_____.		
BIOLOGIST (SENIOR)	SEE BIOLOGIST SPECIFY MINIMUM YEARS OF EXPERIENCE_____.		
CARTOGRAPHER/ GIS SPECIALIST	PREPARES MAPS ON THE EXTENT OF SPILL TOPOGRAPHY, ETC. TO BE DIGITIZED. DESIGNS AND DRAWS ORIGINAL MAPS OF CITIES AND REGIONS. ADAPTS EXISTING MAPS. USES GEOGRAPHIC INFORMATION SYSTEMS AND GLOBAL POSITIONING SYSTEM TO PREPARE MAPS ON THE EXTENT OF SPILL, TOPOGRAPHY, ETC. ANALYZES SPATIAL AND ENVIRONMENTAL DATA.		
CHEMIST (PROJECT)	HOLDS A BACHELOR'S DEGREE OR HIGHER IN CHEMISTRY, BIOCHEMISTRY CHEMICAL ENGINEERING OR RELATED FIELD. PERFORMS CHEMICAL ANALYSIS, SAMPLE ACQUISITION, SETS DATA QUALITY OBJECTIVES, PREPARES REPORTS, PERFORMS CHEMICAL DATA VALIDATION. SPECIFY MINIMUM YEARS OF EXPERIENCE <u> 4 </u> .	\$80.00	\$80.00
CHEMIST (SENIOR)	SEE CHEMIST SPECIFY MINIMUM YEARS EXPERIENCE		
LAB/DATA VALIDATION MANAGER	THIS IS A TECHNICAL POSITION FOR A PERSON WHO HAS COMPLETED A DEGREE IN ENGINEERING OR THE SCIENCES AND HAS BEEN TRAINED TO PERFORM LABORATORY ANALYTICAL PROCEDURES	\$105.00	\$105.00
DRAFTSPERSON	DRAWS SITE PLANS, EQUIPMENT LAYOUTS, AND DETAILED DRAWINGS ON CAD SYSTEMS.	\$80.00	\$80.00
DRILLER	OPERATES DRILL RIG/GEOPROBE OR WELL SERVICE RIG FOR INSTALLATION OF MONITORING WELLS, OBTAIN SAMPLES.	\$70.00	\$105.00
DRILLER ASSISTANT	ASSISTS DRILLER IN ALL RELATED OPERATIONS OF MONITORING AND RECOVERY WELL INSTALLATION AND MAINTENANCE.	\$55.00	\$82.50
PROFESSIONAL ENGINEER (PROJECT) (SPECIALTIES INCLUDE: CIVIL, ELECTRICAL, MECHANICAL, CHEMICAL, ENVIRONMENTAL, ETC.)	HOLDS A BACHELOR'S DEGREE OR HIGHER IN RELEVANT ENGINEERING DISCIPLINE. LICENSED FOR THIS OCCUPATION BY THE DEPARTMENT OF CONSUMER PROTECTION. DESIGNS REMEDIAL AND TREATMENT SYSTEMS, OVERSEES CONSTRUCTION OF REMEDIAL SYSTEMS. AFFIXES PROFESSIONAL ENGINEER SEAL TO DOCUMENTS WHEN REQUIRED. SPECIFY MINIMUM YEARS EXPERIENCE <u> 8 </u> SPECIALTY.	\$128.00	\$128.00
PROFESSIONAL ENGINEER (SENIOR) (SPECIALTIES INCLUDE: CIVIL ELECTRICAL MECHANICAL, CHEMICAL, ENVIRONMENTAL, ETC.)	HOLDS A BACHELOR'S DEGREE IN RELEVANT ENGINEERING DISCIPLINE AND AT LEAST FIVE YEARS EXPERIENCE. ALTERNATIVELY, ANY EQUIVALENT COMBINATION OF EDUCATION AT THE MASTERS OR DOCTORAL LEVEL AND EXPERIENCE. SPECIFY MINIMUM YEARS EXPERIENCE <u> 5 </u> SPECIALTY	\$118.00	\$118.00
ENGINEER (SPECIFY LEVEL OR SPECIALITY)	MUST HAVE COMPLETED A BACHELOR'S DEGREE IN ENGINEERING AND MUST HAVE AT LEAST FOUR YEARS OF EXPERIENCE. ALTERNATIVELY, ANY EQUIVALENT COMBINATION OF EDUCATION AT THE MASTERS OR DOCTORAL LEVEL AND EXPERIENCE.	\$100.00	\$100.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES			
Title/Class	Job Tasks	Straight Time	Overtime
ENGINEER (SPECIFY LEVEL OR SPECIALITY)	MUST HAVE A DEGREE IN ENGINEERING AND HAVE PASSED THE EIT EXAM. SHOULD HAVE AT LEAST ONE (1) YEAR EXPERIENCE SINCE GRADUATION. ALTERNATIVELY, MAY HAVE A MASTER'S DEGREE AND NO EXPERIENCE.	\$97.00	\$97.00
ENGINEER I	THIS IS AN ENTRY LEVEL POSITION FOR A PERSON WHO HAS COMPLETED A DEGREE IN ENGINEERING AND HAS LITTLE OR NO PROFESSIONAL EXPERIENCE.	\$80.00	\$80.00
EXPERT WITNESS	PROVIDES CREDIBLE TESTIMONY DURING A HEARING OR COURT TRIAL. SPECIFY MINIMUM YEARS EXPERIENCE <u>15</u> .	\$225.00	\$225.00
PRINCIPAL/OFFICER	DIRECTS AND ADMINISTERS THE ACTIVITIES OF A PORTION OF THE FIRM'S PRACTICE, AND IS RESPONSIBLE TO COMPLETE ALL PROJECTS ASSIGNED TO THE PORTION OF THE PRACTICE WHICH HE OR SHE DIRECTS.	\$180.00	\$180.00
SENIOR TECHNICIAN	THE SENIOR TECHNICIAN IS A PERSON WITHOUT A FOUR YEAR DEGREE WHO PERFORMS DRAFTING AND FIELD DATA COLLECTION ACTIVITIES.	\$74.00	\$111.00
FIELD TECHNICIAN	COLLECTS GROUND WATER SAMPLES; PROVIDES FIELD SUPPORT; USES AND DEPLOYS EQUIPMENT.	\$61.00	\$91.50
GEOLOGIST PROJECT	HOLDS A BACHELOR'S OR HIGHER DEGREE IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING OR GEOPHYSICS OR RELATED EARTH SCIENCE FIELD. OVERSEES INSTALLATION OF MONITORING WELLS, SOIL BORINGS AND OTHER SEDIMENT SAMPLES, ROCK, CORES, SURFACE WATER AND GROUND WATER SAMPLES AND OTHER ENVIRONMENTAL MEDIA SAMPLES. EVALUATES STRATIGRAPHY OF SOIL AND BEDROCK. USES GEOPHYSICAL EQUIPMENT TO EVALUATE SUBSURFACE CONDITIONS AND LOCATION OF CONTAMINANTS. PREPARES AND EVALUATES MAPS, CROSS SECTION AND OTHER GEOGRAPHIC REPRESENTATIONS OF SUBSURFACE CONDITIONS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC. SPECIFY MINIMUM YEARS EXPERIENCE <u>6-8</u> .	\$110.00	\$110.00
GEOLOGIST (SENIOR)	HOLDS A BACHELOR'S OR HIGHER DEGREE IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING OR GEOPHYSICS OR RELATED EARTH SCIENCE FIELD. OVERSEES INSTALLATION OF MONITORING WELLS, SOIL BORINGS AND OTHER SEDIMENT SAMPLES, ROCK, CORES, SURFACE WATER AND GROUND WATER SAMPLES AND OTHER ENVIRONMENTAL MEDIA SAMPLES. EVALUATES STRATIGRAPHY OF SOIL AND BEDROCK. USES GEOPHYSICAL EQUIPMENT TO EVALUATE SUBSURFACE CONDITIONS AND LOCATION OF CONTAMINANTS. PREPARES AND EVALUATES MAPS, CROSS SECTION AND OTHER GEOGRAPHIC REPRESENTATIONS OF SUBSURFACE CONDITIONS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC. SPECIFY MINIMUM YEARS EXPERIENCE <u>4</u> .	\$102.00	\$102.00
GEOLOGIST	HAS A BACHELOR'S OR HIGHER DEGREE INCLUDING AT LEAST 60 SEMESTER CREDITS IN THE PHYSICAL SCIENCES AND MATHEMATICS, AT LEAST 30 SEMESTER CREDITS OF WHICH MUST BE IN GEOLOGY, ENGINEERING GEOLOGY, HYDROGEOLOGY, GEOLOGICAL ENGINEERING OR GEOPHYSICS.	\$85.00	\$85.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES			
Title/Class	Job Tasks	Straight Time	Overtime
SNR PROJ HYDROGEOLOGIST/SNR PROJ SCIENTIST	IN ADDITION TO ALL THE REQUIREMENTS FOR THE POSITION OF HYDROGEOLOGIST/SCIENTIST, SUCH AS THE OBLIGATION TO BE TECHNICALLY EXTREMELY COMPETENT AND TO MANAGE PROJECTS SO THAT THEY ARE COMPLETED ON TIME AND ON BUDGET, THE SENIOR PROJECT HYDROGEOLOGIST/SCIENTIST HAS THE OBLIGATION TO ACTIVELY PARTICIPATE IN BRINGING WORK INTO THE FIRM.	\$134.00	\$134.00
HYDROGEOLOGIST PROJECT	HOLDS A BACHELOR'S DEGREE OR HIGHER IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING, GEOPHYSICS OR RELATED EARTH SCIENCE FIELD, AND SPECIALIZED TRAINING AND EXPERIENCE IN HYDROGEOLOGY. SPECIALIZES IN EVALUATING THE MOVEMENT OF GROUNDWATER AND THE FATE AND TRANSPORT OF GROUNDWATER CONTAMINANTS. USES COMPUTER MODELS TO ANALYZE AND PREDICT SUBSURFACE MOVEMENT OF GROUNDWATER AND CONTAMINANTS. DESIGNS, SUPERVISES, AND INTERPRETS RESULTS OF GROUNDWATER PUMP TESTS AND SLUG TESTS. PREPARES SPECIFICATIONS FOR MONITORING WELLS AND POTABLE WATER WELLS. MAPS AND EVALUATES GROUNDWATER AQUIFERS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC. SPECIFY MINIMUM YEARS EXPERIENCE <u>6-8</u> .	\$110.00	\$110.00
HYDROGEOLOGIST (SENIOR)	HOLDS A BACHELOR'S DEGREE OR HIGHER IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING, GEOPHYSICS OR RELATED EARTH SCIENCE FIELD, AND SPECIALIZED TRAINING AND EXPERIENCE IN HYDROGEOLOGY. SPECIALIZES IN EVALUATING THE MOVEMENT OF GROUNDWATER AND THE FATE AND TRANSPORT OF GROUNDWATER CONTAMINANTS. USES COMPUTER MODELS TO ANALYZE AND PREDICT SUBSURFACE MOVEMENT OF GROUNDWATER AND CONTAMINANTS. DESIGNS, SUPERVISES, AND INTERPRETS RESULTS OF GROUNDWATER PUMP TESTS AND SLUG TESTS. PREPARES SPECIFICATIONS FOR MONITORING WELLS AND POTABLE WATER WELLS. MAPS AND EVALUATES GROUNDWATER AQUIFERS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC SPECIFY MINIMUM YEARS EXPERIENCE <u>4</u> .	\$102.00	\$102.00
HYDROGEOLOGIST/SCIENTIST	THE STAFF HYDROGEOLOGIST/SCIENTISTS ARE ASSIGNED TO SPECIFIC TASKS ON THE PROJECT TEAM, AND ARE EXPECTED TO USE THEIR EDUCATION, INTELLIGENCE AND COMMON SENSE TO RESOLVE THE ENGINEERING PROBLEMS AND TASKS THEY ARE ASSIGNED.	\$95.00	\$95.00
HYDROGEOLOGIST /SCIENTIST I	HAS A MASTERS OR HIGHER DEGREE IN GEOLOGY, ENGINEERING GEOLOGY, AND FAMILIARITY WITH NON-HAZARDOUS WASTES AS WELL AS AIR AND WATER. SPECIALIZES IN DOT/EPA TRANSPORTATION REGULATIONS AND ASSOCIATED SHIPPING PAPER PREPARATION, PLACARDING AND HANDLING.	\$74.00	\$74.00



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES			
Title/Class	Job Tasks	Straight Time	Overtime
INDUSTRIAL HYGIENIST	HAS A BACHELOR'S OR HIGHER DEGREE IN APPROPRIATE TECHNICAL DISCIPLINE. . OVERSEES MONITORING ANALYTICAL METHODS REQUIRED TO DETECT THE EXTENT OF EXPOSURE AND THE ENGINEERING OR OTHER METHODS USE FOR HAZARD CONTROL. DEVELOPS CORRECTIVE MEASURES TO CONTROL HEALTH HAZARDS BY REDUCING OR ELIMINATING EXPOSURE.		
LICENSED SURVEYOR	LICENSED FOR THIS PROFESSIONAL TITLE BY THE DEPARTMENT OF CONSUMER PROTECTION.	\$112.00	\$112.00
LICENSED ENVIRONMENTAL PROFESSIONAL	HAS ENGINEERING, GEOLOGY OR HYDROGEOLOGY TRAINING AND IS LICENSED BY THE BOARD FOR THIS PROFESSIONAL TITLE.	\$185.00	\$185.00
WETLAND/SOIL SCIENCE PROJECT	HOLDS A BACHELOR'S OR HIGHER DEGREE IN SOIL SCIENCE, GEOLOGY, EARTH SCIENCE, BIOLOGY, BOTANY OR OTHER RELEVANT DISCIPLINES PLUS SPECIALIZED TRAINING AND EXPERIENCE IN WETLAND EVALUATION OR SOIL SCIENCE. DELINEATED WETLANDS USING RECOGNIZED FEDERAL OR STATE METHODOLOGIES. INTERPRETS AND EVALUATES SOIL TYPES. CLASSIFIES SOIL SAMPLES AND EVALUATES EFFECTS OF CONTAMINANTS ON WETLANDS AND RELATED ANIMAL AND PLANT COMMUNITIES. SPECIFY MINIMUM YEARS EXPERIENCE _____.		
WETLANDS/SOIL (SENIOR)	SEE WETLAND/SOIL SCIENTIST SPECIFY MINIMUM YEARS EXPERIENCE _____.		
RISK ASSESSOR	HOLDS BACHELOR'S DEGREE OR HIGHER IN BIOLOGY, CHEMISTRY OR OTHER RELEVANT NATURAL LIFE SCIENCES PLUS SPECIALIZED TRAINING AND EXPERIENCE IN ECOLOGICAL HUMAN HEALTH RISK ASSESSMENT. EVALUATES ACTUAL OR POTENTIAL EFFECTS OF PHYSICAL OR CHEMICAL CONTAMINANTS ON HUMAN HEALTH OR BIOLOGICAL RECEPTORS.		
CLERICAL STAFF	USES COMPUTERS, TYPEWRITERS AND OTHER OFFICE EQUIPMENT TO PROVIDE CLERICAL AND LOGISTICAL SUPPORT TO PROJECT. MAY TYPE REPORTS, CORRESPONDENCE AND OTHER WRITTEN MATERIAL. MAY PREPARE BILLS, INVOICES, AND RELATED DOCUMENTS.	\$55.00	\$82.50
Senior Project Manager	In addition to the requirements for the position of Project Manager, such as the obligation to be an extremely competent specialist in his or her area of expertise, and to manage projects so that they are completed on time and on budget, the Senior Project Manager has the obligation to actively participate in bringing work into the firm.	\$159.00	\$159.00
PROJECT MANAGER	OVERSEES AND COORDINATES PROJECTS FROM AN ADMINISTRATIVE AND OPERATIONS STANDPOINT. INITIAL CONTACT AT SITE FOR PROJECTS. DEP LIAISON. SPECIFY MINIMUM YEARS EXPERIENCE 8 _____.	\$146.00	\$146.00
TECHNICAL EXPERT	THE TECHNICAL DIRECTORS ASSURE THAT PROJECT STAFF ARE APPROPRIATELY TRAINED AND THAT THE FIRM DEVELOPS AND MAINTAINS KNOWLEDGE OF LEADING EDGE SCIENCE AND TECHNOLOGY.	\$160.00	\$160.00
Skilled Operators	Operators must be signatory to International Union of Operating Engineers and must be affiliated with Local 478. Each operator must have a minimum 5 years of documented experience operating equipment.	\$85.47	\$124.30
Skilled Laborers	Laborers must be signatory Connecticut Laborers District Council of the Laborers International Union of North America and must be affiliated with Local 455.	\$66.85	\$99.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES			
Title/Class	Job Tasks	Straight Time	Overtime
Construction Superintendent	Must have a minimum 10 years experience overseeing field operations and must be extremely competent specialist in his or her area of expertise. Principal member of the project team with overall responsibility for field operations and ensuring projects are completed on time and on budget.	\$145.00	\$145.00

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES

GROUNDWATER TREATMENT SYSTEM RATE SCHEDULE

<u>Service</u>	<u>Rate</u>
<b>21,000-GALLON FRACTIONALIZATION TANK FOR SETTLEMENT OF SUSPENDED SOLIDS</b>	
• MOBILIZATION/SETUP	\$500.00
• DAILY RENTAL	\$110.00
• WEEKLY RENTAL	\$675.00
• MONTHLY RENTAL	\$2,000.00
• DEMOBILIZATION	\$1,350.00
<b>GROUNDWATER TREATMENT</b>	
• MOBILIZATION/SETUP/DEMOBILIZATION	\$1,900.00
• DAILY TREATMENT SYSTEM RENTAL (UP TO 8 HOUR/DAY OPERATION)	\$850.00
• WEEKLY TREATMENT SYSTEM RENTAL (UP TO 8 HOUR/DAY OPERATION)	\$2,800.00
• MONTHLY TREATMENT SYSTEM RENTAL (UP TO 8 HOUR/DAY OPERATION)	\$8,250.00
• DAILY TREATMENT SYSTEM RENTAL (OVER 8 HOUR/DAY OPERATION)	\$1,400.00
• WEEKLY TREATMENT SYSTEM RENTAL (OVER 8 HOUR/DAY OPERATION)	\$4,650.00
• MONTHLY TREATMENT SYSTEM RENTAL (OVER TO 8 HOUR/DAY OPERATION)	\$13,500.00
<b>ADDITIONAL CHARGES</b>	
• REGENERATION OF CARBON (PER 1,000 LBS. MINIMUM; NON-HAZARDOUS)	\$2,500.00
• OPERATOR/MAINTENANCE (STRAIGHT TIME HOURLY)	\$70.00
• OPERATOR/MAINTENANCE (OVERTIME HOURLY)	\$86.50
• OPERATOR/MAINTENANCE (PREMIUM TIME HOURLY)	\$140.00
• DAILY 30 KW GENERATOR RENTAL (UP TO 8 HOUR/DAY OPERATION - INCLUDES FUEL)	\$290.00
• WEEKLY 30 KW GENERATOR RENTAL (UP TO 8 HOUR/DAY OPERATION - INCLUDES FUEL)	\$1,000.00
• MONTHLY 30 KW GENERATOR RENTAL (UP TO 8 HOUR/DAY OPERATION - INCLUDES FUEL)	\$3,100.00
• DAILY 30 KW GENERATOR RENTAL (OVER 8 HOUR/DAY OPERATION - INCLUDES FUEL)	\$500.00
• WEEKLY 30 KW GENERATOR RENTAL (OVER 8 HOUR/DAY OPERATION - INCLUDES FUEL)	\$1,650.00
• MONTHLY 30 KW GENERATOR RENTAL (OVER 8 HOUR/DAY OPERATION - INCLUDES FUEL)	\$5,150.00
DISPOSAL OF SEDIMENT, FILTER ELEMENTS AND DECONTAMINATION WASTEWATER TO BE COORDINATED AND INVOICED DIRECTLY THROUGH OWNER	

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES		Range of Current Hourly Raw Cost		Calculated Hourly Rate		Key Staff member
Title/Class	Job Tasks	Straight Time	Overtime	Low-End	High-End	
BIOLOGIST (PROJECT)	HAS A BACHELORS DEGREE OR HIGHER IN BIOLOGY, LIFE SCIENCES, BOTANY, FORESTRY, ZOOLOGY, ECOLOGY OR RELATED FIELD. PERFORMS AND SUPERVISES BIOLOGICAL SAMPLING AND SURVEYS, WATER, SOIL AND SEDIMENT SAMPLING TO EVALUATE THE EFFECT OF CONTAMINANTS ON PLANTS AND ANIMALS. PROVIDES TECHNICAL ASSISTANCE TO BIOREMEDIATION PROJECTS. SPECIFY MINIMUM YEARS OF EXPERIENCE _____.					
BIOLOGIST (SENIOR)	SEE BIOLOGIST SPECIFY MINIMUM YEARS OF EXPERIENCE _____.					
CARTOGRAPHER/ GIS SPECIALIST	PREPARES MAPS ON THE EXTENT OF SPILL TOPOGRAPHY, ETC. TO BE DIGITIZED. DESIGNS AND DRAWS ORIGINAL MAPS OF CITIES AND REGIONS. ADAPTS EXISTING MAPS. USES GEOGRAPHIC INFORMATION SYSTEMS AND GLOBAL POSITIONING SYSTEM TO PREPARE MAPS ON THE EXTENT OF SPILL, TOPOGRAPHY, ETC. ANALYZES SPATIAL AND ENVIRONMENTAL DATA.					
CHEMIST (PROJECT)	HOLDS A BACHELOR'S DEGREE OR HIGHER IN CHEMISTRY, BIOCHEMISTRY CHEMICAL ENGINEERING OR RELATED FIELD. PERFORMS CHEMICAL ANALYSIS, SAMPLE ACQUISITION, SETS DATA QUALITY OBJECTIVES, PREPARES REPORTS, PERFORMS CHEMICAL DATA VALIDATION. SPECIFY MINIMUM YEARS OF EXPERIENCE <u>4</u> .	\$80.00	\$80.00	\$20.47	\$34.68	\$53.22 \$90.17
CHEMIST (SENIOR)	SEE CHEMIST SPECIFY MINIMUM YEARS EXPERIENCE _____.					
LAB/DATA VALIDATION MANAGER	THIS IS A TECHNICAL POSITION FOR A PERSON WHO HAS COMPLETED A DEGREE IN ENGINEERING OR THE SCIENCES AND HAS BEEN TRAINED TO PERFORM LABORATORY ANALYTICAL PROCEDURES.	\$105.00	\$105.00	\$31.96	\$42.46	\$83.10 \$110.40
DRAFTSPERSON	DRAWS SITE PLANS, EQUIPMENT LAYOUTS, AND DETAILED DRAWINGS ON CAD SYSTEMS.	\$80.00	\$80.00	\$28.33	\$36.21	\$73.66 \$94.15 George Borrego
DRILLER	OPERATES DRILL RIG/GEOPOROBES OR WELL SERVICE RIG FOR INSTALLATION OF MONITORING WELLS, OBTAIN SAMPLES.	\$70.00	\$105.00	\$19.00	\$31.50	\$49.40 \$81.90
DRILLER ASSISTANT	ASSISTS DRILLER IN ALL RELATED OPERATIONS OF MONITORING AND RECOVERY WELL INSTALLATION AND MAINTENANCE.	\$55.00	\$82.50	\$15.00	\$25.00	\$39.00 \$65.00
PROFESSIONAL ENGINEER (PROJECT) (SPECIALTIES INCLUDE: CIVIL, ELECTRICAL, MECHANICAL, CHEMICAL, ENVIRONMENTAL, ETC.)	HOLDS A BACHELOR'S DEGREE OR HIGHER IN RELEVANT ENGINEERING DISCIPLINE. LICENSED FOR THIS OCCUPATION BY THE DEPARTMENT OF CONSUMER PROTECTION. DESIGNS REMEDIAL AND TREATMENT SYSTEMS, OVERSEES CONSTRUCTION OF REMEDIAL SYSTEMS. AFFIXES PROFESSIONAL ENGINEER SEAL TO DOCUMENTS WHEN REQUIRED. SPECIFY MINIMUM YEARS EXPERIENCE <u>8</u> SPECIALTY.	\$128.00	\$128.00	\$32.70	\$55.00	\$85.02 \$143.00
PROFESSIONAL ENGINEER (SENIOR) (SPECIALTIES INCLUDE: CIVIL ELECTRICAL, MECHANICAL, CHEMICAL, ENVIRONMENTAL, ETC.)	HOLDS A BACHELOR'S DEGREE IN RELEVANT ENGINEERING DISCIPLINE AND AT LEAST FIVE YEARS EXPERIENCE. ALTERNATIVELY, ANY EQUIVALENT COMBINATION OF EDUCATION AT THE MASTERS OR DOCTORAL LEVEL AND EXPERIENCE. SPECIFY MINIMUM YEARS EXPERIENCE <u>5</u> SPECIALTY	\$118.00	\$118.00	\$29.69	\$49.16	\$77.19 \$127.82

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES				Range of Current Hourly Raw Cost		Calculated Hourly Rate		
Title/Class	Job Tasks	Straight Time	Overtime	Low-End	High-End	Low-End	High-End	Key Staff member
ENGINEER (SPECIFY LEVEL OR SPECIALITY)	MUST HAVE COMPLETED A BACHELOR'S DEGREE IN ENGINEERING AND MUST HAVE AT LEAST FOUR YEARS OF EXPERIENCE. ALTERNATIVELY, ANY EQUIVALENT COMBINATION OF EDUCATION AT THE MASTERS OR DOCTORAL LEVEL AND EXPERIENCE.	\$100.00	\$100.00	\$27.11	\$40.48	\$70.49	\$105.25	
ENGINEER (SPECIFY LEVEL OR SPECIALITY)	MUST HAVE A DEGREE IN ENGINEERING AND HAVE PASSED THE EIT EXAM. SHOULD HAVE AT LEAST ONE (1) YEAR EXPERIENCE SINCE GRADUATION. ALTERNATIVELY, MAY HAVE A MASTER'S DEGREE AND NO EXPERIENCE.	\$97.00	\$97.00	\$21.65	\$37.18	\$56.29	\$96.67	
ENGINEER I	THIS IS AN ENTRY LEVEL POSITION FOR A PERSON WHO HAS COMPLETED A DEGREE IN ENGINEERING AND HAS LITTLE OR NO PROFESSIONAL EXPERIENCE.	\$80.00	\$80.00	\$16.50	\$29.65	\$42.90	\$77.09	
EXPERT WITNESS	PROVIDES CREDIBLE TESTIMONY DURING A HEARING OR COURT TRIAL. SPECIFY MINIMUM YEARS EXPERIENCE <u>15</u> .	\$225.00	\$225.00	\$64.94	\$123.44	\$168.84	\$320.94	
PRINCIPAL/OFFICER	DIRECTS AND ADMINISTERS THE ACTIVITIES OF A PORTION OF THE FIRM'S PRACTICE, AND IS RESPONSIBLE TO COMPLETE ALL PROJECTS ASSIGNED TO THE PORTION OF THE PRACTICE WHICH HE OR SHE DIRECTS.	\$180.00	\$180.00	\$64.94	\$123.44	\$168.84	\$320.94	Brian Cutler, Peter Susca, Margaret Averill
SENIOR TECHNICIAN	THE SENIOR TECHNICIAN IS A PERSON WITHOUT A FOUR YEAR DEGREE WHO PERFORMS DRAFTING AND FIELD DATA COLLECTION ACTIVITIES.	\$74.00	\$111.00	\$19.00	\$31.50	\$49.40	\$81.90	
FIELD TECHNICIAN	COLLECTS GROUND WATER SAMPLES; PROVIDES FIELD SUPPORT; USES AND DEPLOYS EQUIPMENT.	\$61.00	\$91.50	\$15.00	\$25.00	\$39.00	\$65.00	
GEOLOGIST PROJECT	HOLDS A BACHELOR'S OR HIGHER DEGREE IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING OR GEOPHYSICS OR RELATED EARTH SCIENCE FIELD. OVERSEES INSTALLATION OF MONITORING WELLS, SOIL BORINGS AND OTHER SEDIMENT SAMPLES, ROCK, CORES, SURFACE WATER AND GROUND WATER SAMPLES AND OTHER ENVIRONMENTAL MEDIA SAMPLES. EVALUATES STRATIGRAPHY OF SOIL AND BEDROCK. USES GEOPHYSICAL EQUIPMENT TO EVALUATE SUBSURFACE CONDITIONS AND LOCATION OF CONTAMINANTS. PREPARES AND EVALUATES MAPS, CROSS SECTION AND OTHER GEOGRAPHIC REPRESENTATIONS OF SUBSURFACE CONDITIONS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC. SPECIFY MINIMUM YEARS EXPERIENCE <u>6-8</u> .	\$110.00	\$110.00	\$25.16	\$42.14	\$65.42	\$109.56	
GEOLOGIST (SENIOR)	HOLDS A BACHELOR'S OR HIGHER DEGREE IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING OR GEOPHYSICS OR RELATED EARTH SCIENCE FIELD. OVERSEES INSTALLATION OF MONITORING WELLS, SOIL BORINGS AND OTHER SEDIMENT SAMPLES, ROCK, CORES, SURFACE WATER AND GROUND WATER SAMPLES AND OTHER ENVIRONMENTAL MEDIA SAMPLES. EVALUATES STRATIGRAPHY OF SOIL AND BEDROCK. USES GEOPHYSICAL EQUIPMENT TO EVALUATE SUBSURFACE CONDITIONS AND LOCATION OF CONTAMINANTS. PREPARES AND EVALUATES MAPS, CROSS SECTION AND OTHER GEOGRAPHIC REPRESENTATIONS OF SUBSURFACE CONDITIONS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC. SPECIFY MINIMUM YEARS EXPERIENCE <u>4</u> .	\$102.00	\$102.00	\$19.03	\$40.14	\$49.48	\$104.36	

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES				Range of Current Hourly Raw Cost		Calculated Hourly Rate		Key Staff member	
Title/Class	Job Tasks	Straight Time	Overtime	Low-End	High-End	Low-End	High-End		
GEOLOGIST	HAS A BACHELOR'S OR HIGHER DEGREE INCLUDING AT LEAST 60 SEMESTER CREDITS IN THE PHYSICAL SCIENCES AND MATHEMATICS, AT LEAST 30 SEMESTER CREDITS OF WHICH MUST BE IN GEOLOGY, ENGINEERING GEOLOGY, HYDROGEOLOGY, GEOLOGICAL ENGINEERING OR GEOPHYSICS.	\$85.00	\$85.00	\$18.56	\$29.35	\$48.26	\$76.31		
SNR PROJ HYDROGEOLOGIST/SNR PROJ SCIENTIST	IN ADDITION TO ALL THE REQUIREMENTS FOR THE POSITION OF HYDROGEOLOGIST/SCIENTIST, SUCH AS THE OBLIGATION TO BE TECHNICALLY EXTREMELY COMPETENT AND TO MANAGE PROJECTS SO THAT THEY ARE COMPLETED ON TIME AND ON BUDGET, THE SENIOR PROJECT HYDROGEOLOGIST/SCIENTIST HAS THE OBLIGATION TO ACTIVELY PARTICIPATE IN BRINGING WORK INTO THE FIRM.	\$134.00	\$134.00	\$31.26	\$48.55	\$81.28	\$126.23	Rick Brainerd, David Brisson, Steven Murdock	
HYDROGEOLOGIST PROJECT	HOLDS A BACHELOR'S DEGREE OR HIGHER IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING, GEOPHYSICS OR RELATED EARTH SCIENCE FIELD, AND SPECIALIZED TRAINING AND EXPERIENCE IN HYDROGEOLOGY. SPECIALIZES IN EVALUATING THE MOVEMENT OF GROUNDWATER AND THE FATE AND TRANSPORT OF GROUNDWATER CONTAMINANTS. USES COMPUTER MODELS TO ANALYZE AND PREDICT SUBSURFACE MOVEMENT OF GROUNDWATER AND CONTAMINANTS. DESIGNS, SUPERVISES, AND INTERPRETS RESULTS OF GROUNDWATER PUMP TESTS AND SLUG TESTS. PREPARES SPECIFICATIONS FOR MONITORING WELLS AND POTABLE WATER WELLS. MAPS AND EVALUATES GROUNDWATER AQUIFERS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC. SPECIFY MINIMUM YEARS EXPERIENCE <u>6-8</u> .	\$110.00	\$110.00	\$25.16	\$42.14	\$65.42	\$109.56		
HYDROGEOLOGIST (SENIOR)	HOLDS A BACHELOR'S DEGREE OR HIGHER IN GEOLOGY, HYDROGEOLOGY, ENGINEERING GEOLOGY, GEOLOGICAL ENGINEERING, GEOPHYSICS OR RELATED EARTH SCIENCE FIELD, AND SPECIALIZED TRAINING AND EXPERIENCE IN HYDROGEOLOGY. SPECIALIZES IN EVALUATING THE MOVEMENT OF GROUNDWATER AND THE FATE AND TRANSPORT OF GROUNDWATER CONTAMINANTS. USES COMPUTER MODELS TO ANALYZE AND PREDICT SUBSURFACE MOVEMENT OF GROUNDWATER AND CONTAMINANTS. DESIGNS, SUPERVISES, AND INTERPRETS RESULTS OF GROUNDWATER PUMP TESTS AND SLUG TESTS. PREPARES SPECIFICATIONS FOR MONITORING WELLS AND POTABLE WATER WELLS. MAPS AND EVALUATES GROUNDWATER AQUIFERS. PREPARES WRITTEN REPORTS, MAPS, CROSS SECTIONS, ETC. SPECIFY MINIMUM YEARS EXPERIENCE <u>4</u> .	\$102.00	\$102.00	\$22.55	\$40.14	\$58.63	\$104.36		
HYDROGEOLOGIST/SCIENTIST	THE STAFF HYDROGEOLOGIST/SCIENTISTS ARE ASSIGNED TO SPECIFIC TASKS ON THE PROJECT TEAM, AND ARE EXPECTED TO USE THEIR EDUCATION, INTELLIGENCE AND COMMON SENSE TO RESOLVE THE ENGINEERING PROBLEMS AND TASKS THEY ARE ASSIGNED.	\$95.00	\$95.00	\$18.44	\$38.09	\$47.94	\$99.03		

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES				Range of Current Hourly Raw Cost		Calculated Hourly Rate		Key Staff member	
Title/Class	Job Tasks	Straight Time	Overtime	Low-End	High-End	Low-End	High-End		
HYDROGEOLOGIST I/SCIENTIST I	HAS A MASTERS OR HIGHER DEGREE IN GEOLOGY, ENGINEERING GEOLOGY, AND FAMILIARITY WITH NON-HAZARDOUS WASTES AS WELL AS AIR AND WATER. SPECIALIZES IN DOT/EPA TRANSPORTATION REGULATIONS AND ASSOCIATED SHIPPING PAPER PREPARATION, PLACARDING AND HANDLING.	\$74.00	\$74.00	\$17.68	\$28.30	\$45.97	\$73.58		
INDUSTRIAL HYGIENIST	HAS A BACHELOR'S OR HIGHER DEGREE IN APPROPRIATE TECHNICAL DISCIPLINE. OVERSEES MONITORING ANALYTICAL METHODS REQUIRED TO DETECT THE EXTENT OF EXPOSURE AND THE ENGINEERING OR OTHER METHODS USE FOR HAZARD CONTROL. DEVELOPS CORRECTIVE MEASURES TO CONTROL HEALTH HAZARDS BY REDUCING OR ELIMINATING EXPOSURE.								
LICENSED SURVEYOR	LICENSED FOR THIS PROFESSIONAL TITLE BY THE DEPARTMENT OF CONSUMER PROTECTION.	\$112.00	\$112.00	\$38.44	\$44.50	\$99.94	\$115.70		
LICENSED ENVIRONMENTAL PROFESSIONAL	HAS ENGINEERING, GEOLOGY OR HYDROGEOLOGY TRAINING AND IS LICENSED BY THE BOARD FOR THIS PROFESSIONAL TITLE.	\$185.00	\$185.00	\$64.94	\$123.44	\$168.84	\$320.94		
WETLAND/SOIL SCIENCE PROJECT	HOLDS A BACHELOR'S OR HIGHER DEGREE IN SOIL SCIENCE, GEOLOGY, EARTH SCIENCE, BIOLOGY, BOTANY OR OTHER RELEVANT DISCIPLINES PLUS SPECIALIZED TRAINING AND EXPERIENCE IN WETLAND EVALUATION OR SOIL SCIENCE. DELINEATED WETLANDS USING RECOGNIZED FEDERAL OR STATE METHODOLOGIES. INTERPRETS AND EVALUATES SOIL TYPES. CLASSIFIES SOIL SAMPLES AND EVALUATES EFFECTS OF CONTAMINANTS ON WETLANDS AND RELATED ANIMAL AND PLANT COMMUNITIES. SPECIFY MINIMUM YEARS EXPERIENCE _____.								
WETLANDS/SOIL (SENIOR)	SEE WETLAND/SOIL SCIENTIST SPECIFY MINIMUM YEARS EXPERIENCE _____.								
RISK ASSESSOR	HOLDS BACHELOR'S DEGREE OR HIGHER IN BIOLOGY, CHEMISTRY OR OTHER RELEVANT NATURAL LIFE SCIENCES PLUS SPECIALIZED TRAINING AND EXPERIENCE IN ECOLOGICAL HUMAN HEALTH RISK ASSESSMENT. EVALUATES ACTUAL OR POTENTIAL EFFECTS OF PHYSICAL OR CHEMICAL CONTAMINANTS ON HUMAN HEALTH OR BIOLOGICAL RECEPTORS.								
CLERICAL STAFF	USES COMPUTERS, TYPEWRITERS AND OTHER OFFICE EQUIPMENT TO PROVIDE CLERICAL AND LOGISTICAL SUPPORT TO PROJECT. MAY TYPE REPORTS, CORRESPONDENCE AND OTHER WRITTEN MATERIAL. MAY PREPARE BILLS, INVOICES, AND RELATED DOCUMENTS.	\$55.00	\$82.50	\$12.00	\$29.09	\$31.20	\$75.63		
Senior Project Manager	In addition to the requirements for the position of Project Manager, such as the obligation to be an extremely competent specialist in his or her area of expertise, and to manage projects so that they are completed on time and on budget, the Senior Project Manager has the obligation to actively participate in bringing work into the firm.	\$159.00	\$159.00	\$37.00	\$60.00	\$96.20	\$156.00		
PROJECT MANAGER	OVERSEES AND COORDINATES PROJECTS FROM AN ADMINISTRATIVE AND OPERATIONS STANDPOINT. INITIAL CONTACT AT SITE FOR PROJECTS. DEP LIAISON. SPECIFY MINIMUM YEARS EXPERIENCE _____ 8 _____.	\$146.00	\$146.00	\$28.00	\$58.00	\$72.80	\$150.80		

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: LOUREIRO ENGINEERING ASSOCIATES, INC. AND SUBSIDIARIES				Range of Current Hourly Raw Cost		Calculated Hourly Rate		Key Staff member
Title/Class	Job Tasks	Straight Time	Overtime	Low-End	High-End	Low-End	High-End	
TECHNICAL EXPERT	THE TECHNICAL DIRECTORS ASSURE THAT PROJECT STAFF ARE APPROPRIATELY TRAINED AND THAT THE FIRM DEVELOPS AND MAINTAINS KNOWLEDGE OF LEADING EDGE SCIENCE AND TECHNOLOGY.	\$160.00	\$160.00	\$44.80	\$61.20	\$116.48	\$159.12	Jamie Roche, Elsie Patton, Nick Skoularikis, Gail Batchelder
Skilled Operators	Operators must be signatory to International Union of Operating Engineers and must be affiliated with Local 478. Each operator must have a minimum 5 years of documented experience operating equipment.	\$85.47	\$124.30					
Skilled Laborers	Laborers must be signatory Connecticut Laborers District Council of the Laborers International Union of North America and must be affiliated with Local 455.	\$66.85	\$99.00					
Construction Superintendent	Must have a minimum 10 years experience overseeing field operations and must be extremely competent specialist in his or her area of expertise. Principal member of the project team with overall responsibility for field operations and ensuring projects are completed on time and on budget.	\$145.00	\$145.00					



# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Tighe & Bond, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the "Contract") is made as of the 25th day of October 2012, in the year 2012, by and between, Tighe & Bond, Inc. (the "Contractor,") with a principal place of business at 53 Southampton Road, Westfield, MA 01085, acting by Robert Peirent, P.E., its Senior Vice President and the State of Connecticut, Department of Administrative Services ("DAS"), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims**: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency**: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information**: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver's license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client's financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as "confidential" or "restricted". Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach**: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017 The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of



Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
  - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
  - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
  - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
  - (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.
18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.
20. Delivery.
- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
  - (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
  - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
  - (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
  - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
  - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
  - (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
  - (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
  - (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
  - (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
  - (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

§ 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;



(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Tighe & Bond, Inc.  
53 Southampton Road  
Westfield, MA 01085  
Attention James Olsen

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract

and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.



45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought

pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
- (2) “Business Associate” shall mean the Contractor or Contractor Parties.
- (3) “Covered Entity” shall mean the Client Agency.
- (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA Provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or



(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Tighe & Bond, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Robert Peirent, P.E. \_\_\_\_\_

Carol Wilson \_\_\_\_\_

Print or Type Name

Print or Type Name

Title: Senior Vice President \_\_\_\_\_

Title: DAS Procurement Director \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>Tighe &amp; Bond, Inc.</u>			
<b>Labor Rates</b>			
Title/Class	Job Tasks	Straight Time	Overtime
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>5</u> .	\$94.00	\$94.00
Biologist (Senior)	See Biologist Specify minimum years of experience <u>10</u> .	\$128.00	\$128.00
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$92.00	\$92.00
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience ____.	N/A	
Chemist (Senior)	See Chemist Specify minimum years of experience ____.	N/A	
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$88.00	\$88.00
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	N/A	
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	N/A	
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>5</u> and specialty.	\$114.00	\$114.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>10</u> and specialty.	\$144.00	\$144.00
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>2</u> and specialty.	\$92.00	\$92.00
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>10</u> and specialty.	\$125.00	\$125.00
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>15</u> and specialty.	\$160.00	\$160.00
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$70.00	\$70.00
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	\$92.00	\$92.00
Geologist senior	See geologist Specify minimum years of experience <u>10</u> .	\$128.00	\$128.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	\$92.00	\$92.00
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>10</u> .	\$128.00	\$128.00
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	N/A	
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	N/A	
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$135.00	\$135.00
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. <u>5</u> . Specify minimum years of experience <u>5</u> .	\$94.00	\$94.00
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>10</u> .	\$121.00	\$121.00
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	N/A	
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$72.00	\$72.00
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>10</u> .	\$164.00	\$164.00
Technical Expert (provide specialty)	Provide description Specify minimum years of experience <u>15</u> and specialty.	\$190.00	\$190.00





Field Equipment rental and Consumable Costs  
2012 Price list

Equipment	Rates		
	Daily	3-Day	Weekly
<b>Groundwater</b>			
QED Sample Pro Pump (bladder pump)	\$44	\$88	\$132
QED Rebuild Kits (for bladder pumps)	\$20/each	\$20/each	\$20/each
MP15 Backpack Controller (w/ 1 CO2 tank)	\$66	\$132	\$198
Rental CO2 Tanks (one for 4-6 wells)	\$29/each	\$29/each	\$29/each
YSI Pro Series Quatro	\$110	\$176	\$242
LaMotte 2020 Turbidity Meter	\$22	\$44	\$66
Peristaltic Pump (if low water level)	\$22	\$44	\$66
Oil Water Interface Probe	\$44	\$88	\$132
<b>Soil</b>			
RAE MiniRAE 2000/3000	\$66	\$132	\$176
<b>Air</b>			
Low-flow Air Pump (purge)	\$26	\$53	\$79
Low-Flow Pump Calibrator	\$22	\$44	\$66
Helium-Hydrogen Detector	\$88	\$176	\$264
Helium Regulator (low-flow)	\$22	\$44	\$66
<b>Transportation</b>			
Rented Cargo Van (does not include gas)	\$66	-	\$363
Rented Large SUV (does not include gas)	\$77	-	\$418
Mileage (Personal Car/Company Car)	\$0.56/mile	\$0.56/mile	\$0.56/mile
<b>Tighe &amp; Bond Equipment</b>			
Water Meter (Tighe & Bond field charge)	\$33	-	\$110
Whale Pump (for development)	\$28	-	\$110
Hand Auger	\$22	-	\$72
Survey Equipment (level, rod, and stand)	\$110	-	\$358
Field Charge (includes gloves, decon supplies)	\$28	-	\$83
<b>Consumables</b>			
Bladder Pump Tubing	\$24/100 ft	\$24/100 ft	\$24/100 ft
Well Development Tubing	\$24/100 ft	\$24/100 ft	\$24/100 ft
YSI Calibration Solutions	\$44/full kit	\$44/full kit	\$44/full kit
Encore Samplers (\$26.5/sample)	\$29/sample	\$29/sample	\$29/sample
TerraCore (for VOC vials)	\$2/sample	\$2/sample	\$2/sample

**Encores**

1 case=\$425

2-4 cases=\$413/case

5 or greater=\$400/case

## Consumable Pricing 2012

### Polyethylene Bailers/ Case of 24

0.50" x 36" weighted	\$90.00
0.75 x 36" weighted	\$90.00
1.5 x 36" weighted	\$90.00
3" x 36" weighted	\$95.00
Individual Polyurethane Bailers Each	\$6.00
1.5 x 36" un-waited	\$75.00
1.5"X36" Clear PVC	\$70.00

### Teflon Bailers/Case of 12

1.5" x 12" weighted	\$110.00
1.5 x 36" weighted	\$190.00

### Polyethylene Tubing 100' Rolls

1/2" x 5/8" (Grnfos) use w 1/2 barb	\$22.00	
3/8" x 1/2" (Grnfos) use w 3/8 barb	\$22.00	\$100.00
1/4" x 3/8" (Geo-tech/Isco)	\$22.00	
.170 x 1/4 (Geo-tech/ QED Sample Pro)	\$11.00	\$40.00
.170 x 1/4 (GeoTech Twin Bonded Poly)	\$1.00/FT	\$500.00
1/8" x 3/16 (KVA)	\$22.00	
1/16" x 1/8" ( 3/4 QED Sample Pro)	\$22.00	
.170"X1/4" X .170"X1/4" Poly/Poly Bonded	\$0.56/FT	
1/4" X 3/8" Twin bonded poly	\$1.10/FT	

### 500' roll

### Teflon Tubing

Teflon Lined Poly (3/8"X1/2")	\$1.95/FT
PTFE Milky White tubing (1/4"X3/8")	\$2.45/FT
PTFE Milky White Tubing (3/8"X1/2")	\$3.45/FT
FEP See Through tubing (1/4"X3/8")	\$2.57/FT
FEP See Through Tubing (3/8"X1/2")	\$3.46/FT
PTFE Milky White tubing 3/16"X1/4"	\$0.80/FT

### Teflon Lined Tubing 100' Rolls

1/2" x 5/8" (Grnfos) use w 1/2 barb	\$1.45 per foot
3/8" x 1/2" (Grnfos) use w 3/8 barb	\$1.40 per foot
1/4" x 3/8" (Geo-tech/Isco)	\$1.25 per foot
.170 x 1/4 (Geo-tech/ QED Sample Pro)	\$0.90 per foot
1/8" x 3/16 (KVA)	\$1.40 per foot
1/16" x 1/8" ( 3/4 QED Sample Pro)	\$1.40 per foot

### Silicone Tubing

1/4" x 3/8" (Geo-Tech)	\$1.85 per foot
1/4" x 3/8" (Generic Type)	\$1.50 per foot
3/8" x 5/8" (Isco)	\$3.75 per foot

### Gloves

Latex 100 per box ( S-XL)	\$8.00
Latex 10 boxes per case (S-XL)	\$80.00
Nitrile 100 per box ( S-XL)	\$9.95
Nitrile 10 boxes per case (S-XL)	\$99.00

### Whale Pumps

Whale Pump Model 951	\$49.00 each
Wire	\$0.50 a foot
Clips	\$4.00 each
Whale Pump w 35' Lead and battery clips	\$70.00
Whale Pump w 65' Lead and battery clips	\$125.00

**Calibration Gas****17 Liter Disposable**

Isobutylene	\$30.00
Methane	\$30.00
Zero Air	\$30.00
Pentane	\$30.00
4 Gas Mix	

**34 Liter Disposable**

Isobutylene	\$45.00
Methane	\$45.00
Zero Air	\$45.00
Pentane	\$45.00
4 Gas Mix	

25%LEL Pentane,100ppm CO, 25ppm H2S \$130.00

**58 Liter Disposable**

50%LEL Pentane,500ppm CO, 25ppm H2S \$130.00

**103 Liter Disposable**

Isobutylene	\$90.00
Methane	\$90.00
Zero Air	\$90.00
Pentane	\$90.00

Hydrogen Stubby 99.999% \$350.00 First Time Second Time Refills are \$200.00

Carbon Dioxide 50% Balance N2 \$ 90.00

**Refillable 4 Gas Mixture**

50%LEL CH4/100ppm CO/25ppm H2S/ 19%O2) Balance Air (First Time) \$ 250.00 (Refill Price) \$ 200.00

25%LEL CH4/100ppm CO/25ppm H2S/ 19%O2) Balance Air (First Time) \$ 250.00 (Refill Price) \$ 200.00

50%LEL CH4/50ppm CO/25ppm H2S/ 19%O2) Balance Air (First Time) \$ 250.00 (Refill Price) \$ 200.00

25%LEL CH4/50ppm CO/25ppm H2S/ 19%O2) Balance Air (First Time) \$ 250.00 (Refill Price) \$ 200.00

50%LEL CH4/50ppm CO/10ppm H2S/18%O2) Balance N2 (First Time) \$250.00 (Refill Price) \$200.00

**Calibration Solutions for Water Quality meters****500 ml bottles Larger sizes available upon request**

20ml Pouches of pH 4, 7, 10 and conductivity (20/Box)	\$20.00/Box
ph 10	\$9.00
ph 7	\$9.00
ph 4	\$9.00
Turbidity Solution 1, 10 or 100NTU (500ML)	\$45.00
DI Water 500ML	\$10.00
Gallon Size of pH buffers	\$18.00
20L Cube pH solutions	\$60.00
20.0 NTU (Gallon)	\$73.00
DI Water Gallon	\$20.00
Conductivity 1000us/cm	\$13.00
Conductivity 1000us/cm (4L or 1Gallon)	\$25.00
DI Water 20L Cube	\$45.00
Auto Calibration Gallon Size	\$30.00
DI Water (Gallon Size)	\$12.00
ORP Packets	\$2.75 each
Zobell ORP Solution	\$32.50
U.S. Calibration Kit (500ML Bottles)	\$45.00
Includes: 1 of each ph10,7,4, 1Cond, 2 ORP packs	
YSI Calibration Kit II (125ML Bottles)	\$35.00
Includes: (1) of each ph10,7,4, (1) 1000Cond, (1) 447 Cond, (1) 60ML ORP, (1) 60ML Zero DO	
Add Zobell	\$82.50
Horiba Auto Cal Solution	\$11.00
Oil Sorbent Sock 1.5"X18" (each)	\$ 2.80
Methanol 4L Optima Grade	\$ 95.00

**Supplies**

Alconox Detergent 4 lb. box  
 Alconox packets (box)  
 Liquinox Detergent (gallon Size)  
 Luidnox Quart Size  
 Oil Sorbents (bale of 100 sheets)  
 Universal Sorbent (15"X19" bonded bale of 100 sheets)  
 1.6" Well Sock (box of 30)  
 3.0" Well Sock (box of 12)  
 .45 Micro Ground Water Filters  
 1 Liter Tedlar Bag (Each)  
 5L Tedlar Bags (Each)  
 EnCore Samplers (5 or 25 Gram) (Case of 50)  
 EnCore Samplers (5 or 25 Gram) (Case of 50)  
 EnCore Samplers (5 or 25 Gram) (case of 50)  
 Terra Core (5 or 10 gram) (100/Case)  
 Terra Core (5 or 10 gram) (100/Case)  
 Terra Core (5 or 10 gram) (100/Case)  
 Mason Jars 16 ounces (12/Case)  
 Rite in Rain #311  
 Rite in Rain All Weather Pens  
 Smoke Tube Irritant Fit Test Kit (Smoke tubes with bulbs on bottom)  
 RAE Systems Water Trap Filters (5/Pack)  
 RAE Systems Water Trap Filters (10/Pack)  
 RAE Systems Water Trap Filters (100/Pack)

**Case**

\$19.00  
 \$32.00  
 \$35.00  
 \$11.00  
 \$42.00  
 \$65.00  
 \$78.00  
 \$88.00  
 \$13.00 \$625.00 (Case=50) \$ 995.00  
 \$12.75  
 \$17.25  
 \$8.50 Case 1  
 \$8.25 Case 2 to 4  
 \$8.00 Case 5 to 49  
 \$160.00 Case 1  
 \$152.00 Case 2 to 4  
 \$144.00 Case 5 to 10  
 \$8.80/Case  
 \$3.25/Each  
 \$8.00  
 \$28.00/10Pack  
 \$26.35  
 \$48.45  
 \$439.45

**Well Caps**

1" Well Cap \$9.95 1 to 49  
 1" Well Cap \$8.95 50 or more  
 2" Well Cap \$11.95 1 to 49  
 2" Well Cap \$10.95 50 or more  
 4" Well Cap \$13.95 1 to 49  
 4" Well Cap \$12.95 50 or more  
 2" Female Point ASTM (Each) \$5.90  
 2"X5' Riser Schedule 40 (Part#MXFFJ) \$9.35  
 2"X5' Slot Size .010 schedule 40 High Flow (MXFFJ) \$13.65  
 Well Piping 1" X 5' Well Screen \$11.00  
 Well Piping 3/4" X 5' Well Screen \$10.50  
 Well Piping 1" X 5' Blank Riser \$6.55  
 Well Piping 3/4" X 5' Blank Riser \$6.00  
 Well Piping 1" Male well tip \$5.27  
 Well Piping 3/4" Male well tip \$5.63  
 Well Piping 1" Female Well Tip \$5.93  
 Well Piping 3/4" Female Well Tip \$5.63

# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**TRC Environmental Corp.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012 , by and between, TRC Environmental Corp. (the “Contractor,”) with a principal place of business at 21 Griffin Road North, Windsor, CT 06095, acting by Carl stopper, its Vice President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmaturred, contingent, known or unknown, at law or in equity, in any forum.
  - (b) Client Agency: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) Confidential Information: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) Confidential Information Breach: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
  - (e) Contract: The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017 The parties upon mutual Agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
  3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
  4. Price Schedule, Payment Terms and Billing.
    - (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
    - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
    - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
  5. Rejected Items; Abandonment.
    - (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
  
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of

Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
  - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
  - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
  - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
  - (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.
18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.
20. Delivery.
- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
  - (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
  - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
  - (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
  - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
  - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
  - (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
  - (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
  - (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
  - (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
  - (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

§ 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that



confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

TRC Environmental Corp.  
21 Griffin Road North  
Windsor, CT 06095  
Attention: Carl Stopper

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary
- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those

provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
  - (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the

availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client Agency.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.



- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

TRC Environmental Corporation

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Carl N. Stopper

Carol Wilson

Print or Type Name

Print or Type Name

Title: Vice President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>Proposer:</b> <u>TRC ENVIRONMENTAL CORP.</u>			
<b>MATERIAL COSTS</b>			
	Materials	Units	Unit Price \$0.00
	17H drum	EACH	\$60.00
	17C drum	EACH	\$65.00
	17E drum	EACH	\$65.00
	Poly rolls/sheets	ROLL	\$60.00
	5 gallon plastic pails	EACH	\$12.00
	2" Locking well plugs	EACH	\$12.00
	4" Locking well plugs	EACH	\$25.00
	6" Locking well plugs	EACH	\$50.00
	Padlocks keyed to one master key	EACH	\$12.00
	Schedule 40 PVC well screen (1" diameter)	FOOT	\$7.00
	Schedule 40 PVC well screen (2" diameter)	FOOT	\$9.00
	Schedule 40 PVC well screen (4" diameter)	FOOT	\$11.00
	Schedule 40 PVC well screen (6" diameter)	FOOT	\$15.00
	Schedule 40 PVC well riser pipe (1" diameter)	FOOT	\$5.50
	Schedule 40 PVC well riser pipe (2" diameter)	FOOT	\$8.00
	Schedule 40 PVC well riser pipe (4" diameter)	FOOT	\$9.50
	Schedule 40 PVC well riser pipe (6" diameter)	FOOT	\$13.00
	Flush mount well cover (2" diameter)	EACH	\$100.00
	Flush mount well cover (4" diameter)	EACH	\$130.00
	Flush mount well cover (6" diameter)	EACH	\$175.00
	Stick-up steel well cover (4" diameter)	EACH	\$150.00
	Sand	50 LB BAG	\$20.00
	Bentonite	50 LB BAG	\$25.00
	Concrete	80 LB BAG	\$20.00
	Acetate liner for geoprobe core (5' length)	EACH	\$10.00
	Deionized water	GALLON	\$3.00
	Bailer-0.75" Disposable	EACH	\$12.00
	Inline Water Filters	EACH	\$25.00
	Tedlar Bags	EACH	\$20.00
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>TRC ENVIRONMENTAL CORP.</u>							
<b>EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)</b>							
Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	Sub-contracted	Truck with 2 man crew	N/A	\$2,700	\$12,500	\$54,000	Sub-Contracted
Direct push drill rig (indicate size and type)	Sub-contracted	Geoprobe 6600 w/2 man crew	N/A	\$2,900	\$9,500	\$41,800	Sub-Contracted
Flow through cell and data analyzer for low flow sampling (specify type)	Rental	YSI 6820 MPS	N/A	\$170	\$500	\$1,300	Rental
	Rental	YSI 600 XLM MPS	N/A	\$90	\$270	\$650	Rental
Magnetometer	Sub-contracted	EM-31 w/ trained person	\$200	\$800	\$4,000	\$16,000	Sub-Contracted
XRF	2	Niton XLP – 301a	N/A	\$100	\$400	\$1,500	\$30,000
Metal detector	1	Schonstedt	N/A	\$20	\$60	\$200	\$1,260
Photo ionization detector	2	Mini Rae Lite	N/A	\$65	\$200	\$600	\$4,300
Flame Ionization Detector	Rental	PE Photovac MicroFID	N/A	\$70	\$230	\$680	Rental
Multi-gas Meter (specify type)	Rental	Multi RAE Plus 5 Gas	N/A	\$65	\$200	\$600	Rental
Landfill Gas Meter	Rental	Landtee GEM 2000	N/A	\$85	\$250	\$750	Rental
Core Drill	Rental	4” Diameter	N/A	\$50	\$250	\$1,000	N/A
Hammer Drill	1	HILTI	N/A	\$50	\$150	\$450	\$1,230
Manometer	Rental	TCI Veloci- Calc+	N/A	\$40	\$120	\$320	Rental



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>TRC ENVIRONMENTAL CORP.</u>			
<b>Labor Rates</b>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>4</u> .	\$70/hr	\$70/hr
Biologist (Senior)	See Biologist Specify minimum years of experience <u>8</u> .	\$90/hr	\$90/hr
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$100/hr	\$100/hr
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience <u>4</u> .	\$80/hr	\$80/hr
Chemist (Senior)	See Chemist Specify minimum years of experience <u>8</u> .	\$100/hr	\$100/hr
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$85/hr	\$85/hr
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	Sub-contracted	Sub-contracted
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	Sub-contracted	Sub-contracted
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>8</u> and specialty.	\$115/hr	\$115/hr

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>12</u> and specialty.	\$140/hr	\$140/hr
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>3</u> and specialty.	\$75/hr	\$75/hr
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>6</u> and specialty.	\$90/hr	\$90/hr
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>20</u> and specialty. Engineer, Hydrogeology, Risk Assessment	\$225/hr	\$225/hr
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$60/hr	\$60/hr
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>4</u> .	\$75/hr	\$75/hr
Geologist senior	See geologist Specify minimum years of experience <u>8</u> .	\$95/hr	\$95/hr

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>4</u> .	\$75/hr	\$75/hr
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>15</u> .	\$140/hr	\$140/hr
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$155/hr	\$155/hr
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	\$125/hr	\$125/hr
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$150/hr	\$150/hr
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience <u>4</u> .	\$80/hr	\$80/hr
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>8</u> .	\$110/hr	\$110/hr
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$120/hr	\$120/hr
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$55/hr	\$55/hr
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>10</u> .	\$135/hr	\$135/hr
Technical Expert (provide specialty)	Provide description Specify minimum years of experience <u>25</u> and specialty.	\$180/hr	\$180/hr

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>TRC ENVIRONMENTAL CORP.</u>			
<b>Proposed and or additional labor not previously specified</b>			
		<b>Straight Time</b>	<b>Overtime</b>
<b>Title/Class</b>	<b>Job Tasks</b>		
Risk Assessment Senior	See Risk Assessment Description. Minimum Years Experience – 15 Years	\$155/hr	\$155/hr
Project Manager Senior	See Project Manager Description. Minimum Years Experience – 15 Years	\$165/hr	\$165/hr
Corporate Health & Safety Director	See Industrial Hygienist Description. Minimum Years Experience – 20 Years	\$175/hr	\$175/hr
Corporate Quality Control Manager	Hold a bachelor’s degree or higher. Minimum Years Experience – 20 Years	\$165/hr	\$165/hr
Senior QA/QC (Lab)	Holds a bachelor degree or higher in chemistry. Minimum Years Experience – 20 Years	\$150/hr	\$150/hr
Principal-in-Charge	Holds a bachelor degree or higher. Minimum Years Experience – 25 Years	\$185/hr	\$185/hr
Senior Draftsperson	See Draftsperson Description. Minimum Years Experience – 15 Years	\$110/hr	\$110/hr
Senior Construction Inspector	Holds a bachelor degree or NICET II. Minimum Years Experience – 10 Years	\$115/hr	\$115/hr
Construction Inspector	Holds an Associates degree or NICET II. Minimum Years Experience – 4 Years	\$85/hr	\$85/hr
Junior Construction Inspector	Holds an Associates degree or higher. Minimum Years Experience – 1 Year	\$70/hr	\$70/hr
Senior Scientist	Holds a bachelors degree or higher. Minimum Years Experience – 10 Years	\$120/hr	\$120/hr
Scientist	Holds a bachelors degree or higher. Minimum Years Experience – 4 Years	\$80/hr	\$80/hr



# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**The Louis Berger Group, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012, by and between, The Louis Berger Group, Inc. (the “Contractor,”) with a principal place of business at 501 Kings highway East, Fairfield, CT 06825, acting by Gul Kahn, PE, its Senior Vice President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) Client Agency: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) Confidential Information: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) Confidential Information Breach: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017. The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
  3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
  4. Price Schedule, Payment Terms and Billing.
    - (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
    - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
    - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
  5. Rejected Items; Abandonment.
    - (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of



Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
  - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
  - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
  - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
  - (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.
18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.
20. Delivery.
- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
  - (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
  - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
  - (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
  - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
  - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
  - (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
  - (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
  - (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
  - (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
  - (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

§ 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.
- (a) For purposes of this Section, the following terms are defined as follows:
- (1) "Commission" means the Commission on Human Rights and Opportunities;
  - (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
  - (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;



(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

The Louis Berger Group, Inc.  
501 Kings Highway East  
Fairfield, CT 06825  
Attention Gul Khan

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) **Umbrella Liability:** Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) **Claims Made:** Not acceptable with the exception of Professional Liability when specified.
- (h) **Type U Underground Damage.** May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) **Professional Liability Minimum** \$5,000,000.00

37. **Headings.** The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. **Number and Gender.** Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. **Parties.** To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. **Contractor Changes.** The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. **Further Assurances.** The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably

requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.



44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.
45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will

endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by

reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L.

111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
- (2) “Business Associate” shall mean the or Contractor or Contractor Parties.
- (3) “Covered Entity” shall mean the Client Agency.
- (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA Provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an

accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:

1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or



- (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
  - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
- (A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

- (1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- (2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- (5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

- (6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and

- (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

The Louis Berger Group, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Gul Khan, PE

Carol Wilson

Print or Type Name

Print or Type Name

Title: Senior Vice President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>Proposer:</b> <u>The Louis Berger Group, Inc.,</u>			
<b>MATERIAL COSTS</b>			
	Materials	Units	Unit Price \$0.00
	2" PVC casing and screen. Well construction materials to complete the wells to CTDEEP specifications (including but not limited to No. 1 filter sand pack, bentonite, sand, concrete, and well caps.)	Foot	16.00
	4" steel casing. Materials and labor to install casing via positive displacement grouting.	Foot	34.00
	Stick-up or Flush mount completion with 4-inch outer diameter steel casing with locking cap and 2 -ft x 2-ft x 0.5 ft concrete collar.	Each	201.00
	Acetate Core Barrel Liners (Macro Core Liner)	Each	8.00
	Bollard (material and installation)	Each	230.00
	Decontamination pad (construction and removal of 10 foot x 10 foot x 0.5 foot deep pad to capture and containerize all decontamination fluids.	Each	344.00
	55-Gallon Drum	Each	63.00
	Packer testing (labor and materials)	Hour	287.00
	Shelby tube sample (labor and materials)	Each	155.00
	Hydropunch groundwater sample (labor and materials)	Each	172.00
	Monitoring Well Abandonment and Report (2" 20' PVC wells)	Each	230.00
	Pressurized steam cleaning and decontamination	Hour	212.00
	Survey stakes and hubs	Box	46.00
	Magnetic Nails	Box	40.00
	Construction Paint	Box	92.00
	Masonry Drill Bits	Each	12.00
	Construction Markers	Pack	9.00
	Mylar	24x36 sheet	58.00
	Vellum	24x36 sheet	17.00

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>The Louis Berger Group, Inc.,</u>							
<b>EQUIPMENT RATES</b> (includes overhead, i.e., taxes, fuel, maintenance, delivery)							
Equipment Description	No. of Units	Capacity/size/ model	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	2	Mobile B-61 truck CME-66 truck Includes crew		3,455.00			100,000.00
	10	CME 45-CME 85 Includes crew Hollow stem auger with split spoon	258.00- 373.00	1952.00- 2870.00			175,000.00 275,000.00
	5	Schramm, Mud Rotary Includes crew	373.00	2,870.00			300,000.00
	5	Schramm, Air Rotary Includes crew	373.00	2,870.00			300,000.00
	6	AMS, Geoprobe and Sonic sampling Includes crew	574.00 – 718.00	4,594.00- 5,742.00			300,000.00 500,000.00
Direct push drill rig (indicate size and type)	1	Mobile B-61 truck Geoprobe push core Includes crew		3,100.00			100,000.00
	12	Geoprobe 420M-7822DT Includes crew	212.00- 258.00	1,608.00 – 2,010.02			15,000.00 175,000.00
Flow through cell and data analyzer for low flow sapling (specify type)	5	Hamilton					1,000.00
Magnetometer							
XRF	1	NITON	114.00	573.00	1,723.00		40,000.00
Metal Detector	3	Schonsshedt					1,000.00
Photo ionization detector	3	ToxiRAE PID MiniRAE					3,000.00
Photo ionization detector	3	ToxiRAE PID MiniRAE					3,000.00
Flame Ionization Detector	2	Photovac					1,200.00
Multi-gas Meter (specify type)	2	MultiRAE Plus					2,500.00
Landfill Gas Meter	2	GEM 2000 Plus					1,500.00
Core Drill	1	Rigid					4,200.00
		Coring (bedrock) Includes crew		2,526.00			250,000.00
		Core drill (concrete) 6" depth 4" dia.					1,000.00
Hammer Drill	1	Northern					300.00
Manometer	3	Fluke, GE					3,000.00



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Proposer: <u>The Louis Berger Group, Inc.,</u>							
<b>EQUIPMENT RATES</b> (includes overhead, i.e., taxes, fuel, maintenance, delivery)							
Equipment Description	No. of Units	Capacity/size/model	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
ADDITIONAL SPACE IS PROVIDED FOR EQUIPMENT THAT THE PROPOSER ANTICIPATES USING ON A REGULAR BASIS							
Side-scan sonar	2	Edgetech 4200 Edgetech 4125	114.00	574.00	1,723.00		30,000.00 27,000.00
Sub-bottom profiler	3	Edgetech 512i Edgetech 412	114.00	574.00	1,723.00		37,000.00 15,000.00
Sector scanner	1	MS 1000	114.00	574.00	1,723.00		30,000.00
Blue view scanner	1	5000	230.00	1,150.00	3,445.00		60,000.00
Sewer & pipe camera	1	Ipek Agilios Geovision	58.00	287.00	1,150.00	2,871.00	30,000.00
Tractors	2	Red Zone, IBEK T66					15,000.00
Ground penetrating radar	1	Mala	114.00	574.00	1,723.00		30,000.00
Vibration/sound	5	Instantel minimate	69.00	344.00	2,296.00	9,188.00	30,000.00
Borehole logging – optical televiewer	2	Robertson					5,000.00
Borehole logging – cable, acquisition	3	Robertson					50,000.00
Borehole logging – sonic tool	1	Robertson					10,000.00
Gradiometer acoustic alarm	2	Rigid					2,000.00
Pumps, tubing, cells	5	IDEX, Blue White					1,000.00
Borehole logging – televiewer	1	Robertson HRAT					20,000.00
Borehole logging – magnetometer	1	Mount Sopris					10,000.00
Borehole logging – electrical	1	Robertson					15,000.00
Tug and barge	1	90ftx30ft, spuds Includes crew	574.00	4,594.00	28,710.00	114,841.00	750,000.00
Boats	3		344.00	2,871.00			100,000.00
Seismic system	3	3 channel	28.00	230.00	1,150.00	2,296.00	5,000.00
		10 channels	114.00	573.00	2,296.00	4,594.00	10,000.00
		24 channels Includes crew	230.00	1,150.00	5,742.00	11,484.00	30,000.00
Sediment coring	2						1,000.00
Parallel seismic system	2	Olson					10,000.00
		10-channel					10,000.00
Magnetic gradiometer	2	Marine magnetics q	230.00	1,150.00	3,445.00	11,484.00	100,000.00
		Geometrics 881	58.00	344.00	2,296.00	6,890.00	20,000.00
Gas Chromatograph Mass spectrometer	2	Inficion Hapsite Smiths Guardian	172.00	861.00	2,296.00		50,000.00
UV/IR/NIS spectrometer	1	Smiths	114.00	574.00	1,723.00		15,000.00
IR camera		FLIR PL-620					10,000.00
Digital video and still cameras	5	Nikon, Canon					20,000.00
UAV	1	Orbiter	114.00	574.00	1,723.00		20,000.00
ROV	1	Blue Ray	114.00	574.00	1,723.00		30,000.00
Site clearing of brush (equipment and labor)		Chain saws, weed whackers, backhoe		1,608.00 – 1,723.00			NA



Title/Class	Job Tasks	Straight Time (2)	Overtime (2)
<b>Biologist (Project)</b>	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience __1 year_.	\$85.00	\$85.00
<b>Biologist (Senior)</b>	See Biologist Specify minimum years of experience __10 years_.	\$145.00	\$145.00
<b>Cartographer/GIS Specialist</b>	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$115.00	\$115.00
<b>Chemist (Project)</b>	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation. Specify minimum years of experience _1 year_.	\$85.00	\$85.00
<b>Chemist (Senior)</b>	See Chemist Specify minimum years of experience _10 years_.	\$110.00	\$110.00
<b>Draftsperson</b>	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$95.00	\$95.00
<b>Driller (1)</b>	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	\$160.00	\$170.00
<b>Driller Assistant (1)</b>	Assists driller in all related operations of monitoring and recovery well installation and maintenance	\$85.00	\$95.00
<b>Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).</b>	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience __1 year_ and specialty.	\$120.00	\$120.00
<b>Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).</b>	See Professional Engineer Specify minimum years of experience _10 years_ and specialty.	\$175.00	\$175.00
<b>Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).</b>	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience __1 year_ and specialty.	\$115.00	\$115.00

Title/Class	Job Tasks	Straight Time (2)	Overtime (2)
<b>Engineer – (Senior)</b> (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>10 years</u> and specialty.	\$145.00	\$145.00
<b>Expert Witness</b>	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>10 years</u> and specialty.	\$225.00	\$225.00
<b>Field Technician</b>	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$75.00	\$75.00
<b>Geologist project</b>	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>1 year</u> .	\$110.00	\$110.00
<b>Geologist senior</b>	See geologist Specify minimum years of experience <u>10 years</u> .	\$145.00	\$145.00
<b>Hydrogeologist Project</b>	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>1 year</u> .	\$115.00	\$115.00
<b>Hydrogeologist Senior</b>	See Hydrogeologist Specify minimum years of experience <u>10 years</u> .	\$145.00	\$145.00
<b>Industrial Hygienist</b>	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$150.00	\$150.00
<b>Licensed Surveyor (1)</b>	Licensed for this professional title by the Department of Consumer Protection.	\$125.00	\$135.00
<b>Licensed Environmental Professional</b>	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$195.00	\$195.00

Title/Class	Job Tasks	Straight Time (2)	Overtime (2)
<b>Wetland /Soil Scientist project</b>	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience __1 year_.	<b>\$85.00</b>	<b>\$85.00</b>
<b>Wetland /Soil Scientist Senior</b>	See Wetland /Soil Scientist Specify minimum years of experience __10 years_.	<b>\$125.00</b>	<b>\$125.00</b>
<b>Risk Assessor</b>	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	<b>\$175.00</b>	<b>\$175.00</b>
<b>Clerical Staff</b>	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	<b>\$75.00</b>	<b>\$75.00</b>
<b>Project Manager</b>	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience __10 years_.	<b>\$180.00</b>	<b>\$180.00</b>
<b>Technical Expert (provide specialty)</b>	Provide description Specify minimum years of experience __10 years_ and specialty.	<b>\$195.00</b>	<b>\$195.00</b>

**Additional Proposed Categories**

<b>Junior Project Manager</b>	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience __5 years_.	<b>\$145.00</b>	<b>\$145.00</b>
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**Note:**

(1) Subcontractors Services

(2) The proposed rates are the lowest / best rates offered to any client in calendar year 2012 from the Hazardous Waste &amp; Contaminated Sediments Division of LBG's Environmental Engineering &amp; Contingency Services business unit.

# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Weston & Sampson Engineers, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 9, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012, by and between, Weston & Sampson Engineers, Inc. (the “Contractor,”) with a principal place of business at 723 Dividend Road, Rocky Hill, CT 06067, acting by Christopher B. Wester, its Vice President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. **Definitions.** Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims:** All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency:** Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information:** This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach:** This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (q) State: The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.
  - (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017 The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the



terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.
8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.

11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.

12. Waiver.

- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

- (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying

out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (a) Perform fully under the Contract;
- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
- (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
- (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates “motor vehicles,” as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles (“ConnDMV”) in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state’s or commonwealth’s applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator’s license or commercial driver’s license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000

pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Weston & Sampson Engineers, Inc.  
723 Dividend Road  
Rocky Hill, CT 06067  
Attention: Christopher Wester

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract

and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought

pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
- (2) “Business Associate” shall mean the Contractor or Contractor Parties.
- (3) “Covered Entity” shall mean the Client Agency.
- (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA Provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide



an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Weston & Sampson Engineers, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Christopher B. Wester

Carol Wilson

Print or Type Name

Print or Type Name

Title: Vice President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

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PROPOSER: <u>Weston &amp; Sampson Engineers, Inc.</u>			
<b>Labor Rates</b>			
Title/Class	Job Tasks	Straight Time	Overtime
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>1</u> .	\$75.00	
Biologist (Senior)	See Biologist Specify minimum years of experience <u>8</u> .	\$105.00	
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$80.00	
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation. Specify minimum years of experience <u>1</u> .	\$75.00	
Chemist (Senior)	See Chemist Specify minimum years of experience <u>8</u> .	\$105.00	
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$71.00	
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	\$105	
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	\$75.00	
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>10</u> and specialty. (civil/environmental, electrical, mechanical)	\$105.00	



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>15</u> and specialty. (civil/environmental, electrical, mechanical)	\$120.00	
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>20</u> and specialty. (civil/environmental, electrical, mechanical)	\$140.00	
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>6</u> and specialty. (civil/environmental, electrical, mechanical)	\$95	
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>15</u> and specialty.	\$160.00	
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$65.00	
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>1</u> .	\$75.00	
Geologist senior	See geologist Specify minimum years of experience <u>8</u> .	\$105.00	

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience __1__.	\$83.00	
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience __8__.	\$105.00	
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$120.00	
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	\$105.00	
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$140.00	
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience __1__.	\$83.00	
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience __8__.	\$105.00	
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$120.00	
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$60.00	
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience _15_.	\$140.00	
Technical Expert (provide specialty)	Provide description Specify minimum years of experience _20_ and specialty. (civil/environmental engineering and science)	\$185.00	



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>Weston &amp; Sampson Engineers, Inc.</u>							
<b>EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)</b>							
Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)							
Direct push drill rig (indicate size and type)							
Flow through cell and data analyzer for low flow sampling (specify type)	1	each		\$100			
Magnetometer							
XRF							
Metal detector	1	each		\$100			
Photo ionization detector	2	MiniRAE 2000		\$100			
Flame Ionization Detector							
Multi-gas Meter (specify type)	1	each		\$60			
Landfill Gas Meter	1	each		\$115			
Core Drill	1	Bosch (Bulldog 11224VSR)		\$25			
Hammer Drill	1	Bosch		\$25			
Manometer							

# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Diversified Technology Consultants, Inc.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 5, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012 , by and between, Diversified Technology Consultants, Inc. (the “Contractor,”) with a principal place of business at 2321 Whitney Avenue, Suite 301, Hamden, CT 06518, acting by A. Graham Curtis, PE, LEED AP, its Chief Operating Officer and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims**: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency**: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information**: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach**: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (e) **Contract:** The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.
- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.



Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017 The parties by mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of

Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
- (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
- (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court



**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
  - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
  - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
  - (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
  - (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
  - (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
  - (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
  - (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

§ 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.
- (a) For purposes of this Section, the following terms are defined as follows:
- (1) "Commission" means the Commission on Human Rights and Opportunities;
  - (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
  - (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that



confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Diversified Technology Consultants, Inc.  
2321 Whitney Avenue Suite 301  
Hamden, CT 06518  
Attention Graham Curtis

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract

and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought

pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client Agency.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.



- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Diversified Technology Consultants, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

A. Graham Curtis, PE, LEED, AP

Carol Wilson

Print or Type Name

Print or Type Name

Title: Chief Operating Officer

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>Proposer:</b> <u>Diversified Technology Consultants, Inc.</u>			
<b>MATERIAL COSTS</b>			
	Materials	Units	Unit Price \$0.00
	Polyethylene Tubing	Foot	\$0.25
	Silicon Tubing	Foot	\$2.50
	HDPE Tubing	Foot	\$0.50
	Soil Vapor Tubing	Foot	\$0.75
	Bailer – 1.5” x 48”	Each	\$7.50
	Bailer – 0.50” x 36”	Each	\$7.50
	Nitrile Gloves	Pair	\$0.25
	Level C PPE	Day/Person	\$10.00
	Level D PPE	Day/Person	\$10.00
	Tyvek Suits	Each	\$15.00
	Respirator & Cartridges	Day	\$30.00
	Groundwater Field Filters	Each	\$17.00
	Polyethylene Bladder and Grab Plate	Each	\$10.00
	Teflon Bladder for Pump	Each	\$25.00
	Teflon Check Valve for Pump	Each	\$25.00
	Survey Spray Paint Can	Each	\$8.00
	Wooden Stakes	Each	\$2.50
	Encore Soil Sampler	Each	\$11.00
	Soil Vapor-Expendable Drive Points	Each	\$20.00
	PetroFLAG Field Test	Each	\$25.00
	Field Notebook	Each	\$50.00
	Alconox (1 gallon box)	Each	\$40.00
	Isobutylene Calibration Gas Canister	Each	\$40.00
	Carbon Dioxide/Carbon Monoxide/Nitrogen Gas Canister	Each	\$165.00
	Hydrogen Sulfide Gas Canister	Each	\$80.00
	Yellow Latex Boots	Each	\$10.00
	Small YSI Calibration Kit	Each	\$60.00
	Safety Cones	Each	\$25.00
Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.			



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: Diversified Technology Consultants, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units Owned	Capacity/size/model (specify for each unit)	Hourly Rate (0.25 day rate)	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	1 <sup>1</sup>	CME 75 hollow stem auger (truck) – 2 man crew	N/A <sup>2</sup>	\$2,650	\$11,950	\$46,200	\$100,000+
Direct push drill rig (indicate size and type)	1 <sup>1</sup>	Geoprobe 6600 PC 111 (truck) – 2 man crew	N/A <sup>2</sup>	\$2,250	\$10,150	\$40,200	\$100,000+
Flow through cell <b>and data analyzer</b> for low flow sampling (specify type)	1	YSI 556MP	N/A <sup>2</sup> (\$40)	\$160	\$560	\$1,680	\$5,500.00
Magnetometer	1	Schonstedt GA 72 CD	N/A <sup>2</sup> (\$10)	\$40	\$140	\$420	\$1,100.00
XRF	1 <sup>1</sup>	INNOV-X 4000	N/A <sup>2</sup>	\$700	\$2,000	\$6,000	N/A
Metal detector	1	Schonstedt GA 72 CD	N/A <sup>2</sup> (\$10)	\$40	\$140	\$420	\$1,100.00
Photo ionization detector	3	MiniRae 2000	N/A <sup>2</sup> (\$23.75)	\$95	\$330	\$990	\$4,900.00
Flame Ionization Detector	1 <sup>1</sup>	PhotoVac MicroFID	N/A <sup>2</sup>	\$140	\$490	\$1,450	N/A
Multi-gas Meter (specify type)	1	Rae Systems - VRAE	N/A <sup>2</sup> (\$16.25)	\$65	\$225	\$675	\$2,900.00
Landfill Gas Meter	1 <sup>1</sup>	LANDTEC GEM-500 & GEM-2000	N/A <sup>2</sup>	\$165	\$430	\$1,225	N/A
Core Drill	1 <sup>1</sup>	Husqvarna DS700	N/A <sup>2</sup>	\$200	\$750	\$2,250	N/A
Hammer Drill	1 <sup>1</sup>	Bosch	N/A <sup>2</sup>	\$95	\$330	\$990	N/A
Manometer	1 <sup>1</sup>	Dwyer 471-1	N/A <sup>2</sup>	\$45	\$110	\$300	N/A

**12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES**

**EXHIBIT B PROPOSAL SCHEDULE**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Survey equipment (specify type)	1	Topcon Total Station & Data Logger	N/A <sup>2</sup> (\$31.25)	\$125	\$375	\$1,125	\$17,500.00
Survey equipment (specify type)	1	Level, Tripod, Rod	N/A <sup>2</sup> (\$16.25)	\$65	\$225	\$675	\$1,500.00
Utility class vehicles: (includes cargo vans and trucks)	3	Trailblazer, Jeep, Taurus	N/A <sup>2</sup> (\$12.50)	\$50	\$175	\$525	\$25,000 - \$45,000
Transport Class Vehicles: (includes passenger cars, pick up trucks and passenger vans)		N/A	Specify Mileage rate only: 0.51/mile	N/A	N/A	N/A	N/A
Groundwater Level Indicator	1	Solinst Model 101	N/A <sup>2</sup> (\$6.25)	\$25	\$85	\$250	\$800.00
Oil/Water Interface Meter	1	Solinst Model 122	N/A <sup>2</sup> (\$15.00)	\$60	\$210	\$630	\$1,250.00
Turbidity Meter	2	LaMotte 2020	N/A <sup>2</sup> (\$8.75)	\$35	\$120	\$360	\$1,100.00
pH pen	3	Hanna Ins/Extech	N/A <sup>2</sup> (\$3.75)	\$15	\$50	\$150	\$200.00
Peristaltic Pump w/ Battery Pack	2	Geotech	N/A <sup>2</sup> (\$10.00)	\$40	\$140	\$420	\$1,300.00
Bladder Pump/Controller/Compressor	1 <sup>1</sup>	QED	N/A <sup>2</sup>	\$160	\$560	\$1,675	N/A
Bladder Pump	1 <sup>1</sup>	QED	N/A <sup>2</sup>	\$80	\$210	\$610	N/A
Controller/Backpack (for use with Bladder Pump)	1 <sup>1</sup>	MP 15	N/A <sup>2</sup>	\$110	\$310	\$910	N/A
Hydrolift Pump/Generator/Fuel	1 <sup>1</sup>	Waterra	N/A <sup>2</sup>	\$190	\$660	\$1,975	N/A
Single Stage Whale Pump & Battery Pack	1 <sup>1</sup>	Cyclone/Typhoon	N/A <sup>2</sup> (\$23.75)	\$95	\$330	\$975	N/A
Generator	1 <sup>1</sup>	Honda 1000i	N/A <sup>2</sup>	\$70	\$240	\$700	N/A
GPS Unit	1 <sup>1</sup>	Geo XH & Geo XT Handheld	N/A <sup>2</sup> (\$6.25)	\$280	\$810	\$2,400	N/A
Submersible Pump and Converter	1 <sup>1</sup>	Gundfos Redi-Flo2	N/A <sup>2</sup>	\$210	\$610	\$1,800	N/A
Digital Camera	3	N/A	N/A <sup>2</sup> (\$6.25)	\$25	\$85	\$250	\$450.00
Hand Auger w/extensions up to 12 feet	2	N/A	N/A <sup>2</sup> (\$6.25)	\$25	\$85	\$250	\$1,200.00
Asbestos Sampling Equipment	1	N/A	N/A <sup>2</sup> (\$6.25)	\$25	\$85	\$250	\$300.00
Confined Space Safety Equipment	1	Miller Equipment	N/A <sup>2</sup> (\$25.00)	\$100	\$350	\$1,050	\$6,500.00
Field Scale	1	OHAUS Scout Pro Balance	N/A <sup>2</sup>	\$40	\$140	\$400	\$500.00
Soil Vapor Installation Equipment	1 <sup>1</sup>	KVA Probe Kit and Bosch	N/A <sup>2</sup>	\$250	\$875	\$2,625	N/A

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

		Hammer Drill					
PetroFLAG Petroleum Screening Kit	1 <sup>1</sup>	PetroFLAG	N/A <sup>2</sup>	\$50	\$175	\$525	N/A
Air Pump	1 <sup>1</sup>	SKC 224-PCXR4	N/A <sup>2</sup>	\$30	\$100	\$300	N/A
Dredge Sampler	1 <sup>1</sup>	Wildco Ponar	N/A <sup>2</sup>	\$50	\$130	\$370	N/A
Graduated Cylinder	1	N/A	N/A <sup>2</sup>	\$5	\$15	\$50	\$75.00

<sup>1</sup> Not owned by DTC. To be provided via equipment rental or subcontractor.

<sup>2</sup> Hourly rate not available. Minimum charge for this unit is 0.25 day.

<sup>3</sup> DTC will competitively procure this equipment on a project specific basis to secure the most favorable rate.

<sup>4</sup> Purchase price for new drill rig varies widely based on make/model/size. Actual purchase price may range from \$50,000 to \$100,000 or more.

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>Diversified Technology Consultants, Inc.</u>			
<b>Labor Rates</b>			
<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>5</u> .	85	85
Biologist (Senior)	See Biologist Specify minimum years of experience <u>10</u> .	90	90
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	75	75
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation. Specify minimum years of experience <u>4</u> .	85	85
Chemist (Senior)	See Chemist Specify minimum years of experience <u>8</u> .	N/A	N/A
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	75	75
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	N/A	N/A
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	N/A	N/A
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>5</u> and specialty.	100	100

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>8</u> and specialty.	110	110
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>4</u> and specialty.	75	75
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>10</u> and specialty.	85	85
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>15</u> and specialty.	155	155
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	65	65
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>5</u> .	85	85
Geologist senior	See geologist Specify minimum years of experience <u>10</u> .	90	90

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>6</u> .	90	90
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>10</u> .	125	125
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	135	135
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	90	90
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	135	135
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience <u>2</u> .	80	80
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>4</u> .	90	90
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	N/A	N/A
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	45	55
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>8</u> .	125	125
Technical Expert (provide specialty)	Provide description (LEP, Hydrogeologist, Biologist) Specify minimum years of experience <u>15</u> and specialty.	135	135



# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Arcadis U.S., Incorporated.**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 5, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012 , by and between, ARCADIS U.S., Inc. (the “Contractor,”) with a principal place of business at 213 Court Street, Middletown, CT 06457, acting by Bruce R. Nelson, its Principal/Asst. Vice President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) **Claims**: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) **Client Agency**: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) **Confidential Information**: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) **Confidential Information Breach**: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
  - (e) **Contract**: The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 5, 2012 through October 31, 2017. The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
  3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
  4. Price Schedule, Payment Terms and Billing.
    - (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
    - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
    - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
  5. Rejected Items; Abandonment.
    - (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of



Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
  - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
  - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
  - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
  - (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.
18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.
20. Delivery.
- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
  - (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
  - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
  - (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
  - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
  - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
  - (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
  - (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
  - (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
  - (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
  - (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

§ 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;



(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

Arcadis U.S., Inc.  
213 Court Street, Suite 700  
Middletown, CT 06457  
Mark Barmasse

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) **Umbrella Liability:** Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) **Claims Made:** Not acceptable with the exception of Professional Liability when specified.
- (h) **Type U Underground Damage.** May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) **Professional Liability Minimum** \$5,000,000.00

37. **Headings.** The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. **Number and Gender.** Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. **Parties.** To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. **Contractor Changes.** The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. **Further Assurances.** The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract

and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.



45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
  - (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought

pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client Agency.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or



(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

ARCADIS U.S., Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Bruce R. Nelson

Carol Wilson

Print or Type Name

Print or Type Name

Title: Principal/Asst. Vice President

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>Proposer:</b> <u>ARCADIS-US, Inc.</u>			
<b>MATERIAL COSTS</b>			
	Materials	Units	Unit Price \$0.00
100	1.5"X 3" Disposable PE Bailer	Each	15.00
110	Disposable VOC Sampler	Each	3.50
120	QED Sample Pro Filter	Each	18.50
130	Nalgene Water Filters	Each	7.00
140	Nylon Rope (1/8")	Per/ft.	.12
150	1/2" Vinyl Tubing	Per/ft.	.50
160	1/2" Polyethylene tubing	Per/ft.	1.00
170	1/2" Tygon Tubing	Per/ft.	2.30
180	1/2" Silicon Tubing	Per/ft.	3.50
190	1 Liter Collapsible Bottle	Each	2.30
200	Soil Sample Brass Tube with Cap	Each	14.00
210	Deionized Water	Per/gal.	3.50
220	Lab Grade Detergent	Per/gal.	14.00
250	Inorganic Water Test Ampule	Each	3.50
260	Lock	Each	17.50
270	2" Locking Well Cap	Each	21.00
280	4" Locking Well Cap	Each	35.00
290	Film	Each	7.00
Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.			

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

<b>Proposer:</b> <u>ARCADIS-US, Inc.</u>			
<b>MATERIAL COSTS</b>			
	Materials	Units	Unit Price \$0.00
390	Beakers (up to 600 ml)	Each	4.50
400	Nalgene Beakers (1000 ml)	Each	14.00
410	Detector Tubes	Each	12.50
420	Sample Bottles for Soil	Each	6.00
430	Sample Bottles 1 Liter Plastic	Each	7.00
440	Tedlar Air Samples Bags	Each	32.00
450	PVC or PE Bailer	Each	15.00
460	Rope (1/4" Polyethylene)	Per/ft.	0.18
470	Duct Tape	Per/rl.	10.50
480	Well Tags	Each	14.00
490	Cloth Sample Bags	Each	0.35
500	Cloth Sample Bags	Per/box	30.00
510	Iron Test Kits	Each	3.50
520	Chloride Test Kits	Each	3.50
530	Writeable CD's	Each	4.50
540	General Supplies (Buckets, twine, baggies)	Per/day	11.50
550	Ice	Per/bag	3.00
800	Bailer Teflon 12"	Each	15.00
810	Bailer Teflon 36"	Each	20.00
820	Bailer Clear PVC	Each	63.00
830	Tubing Teflon	Per/ft.	5.00
840	Tubing Teflon Lined Polyethylene	Per/ft.	3.00
850	PVC Slugs	Per/well	5.00
880	First aid kits	Per/day	20.00
890	Fire Extinguisher	Each	15.00
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>ARCADIS-US, Inc.</u>							
<b>EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)</b>							
Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	*						
Direct push drill rig (indicate size and type)	*						
Flow through cell and data analyzer for low flow sampling (specify type)		Horiba	-	\$175	\$500	\$1,200	\$3,500
Magnetometer		-----	-	\$50	\$125	\$400	Vendor
XRF		Niton	-	\$600	\$2,500	\$5,800	\$18,500
Metal detector		Schonstedt	-	\$45	\$135	-	\$700
Photo Ionization detector		MiniRae	-	\$105	\$315	-	\$3,600
Flame Ionization Detector		Photovac	-	\$145	\$435	-	\$8,300
Multi-gas Meter (specify type)		RaeSystems	-	\$75	\$225	-	\$1,000
Landfill Gas Meter		Landtec	-	\$75	\$225		\$7,900
Core Drill	*						
Hammer Drill		Hilti	-	\$35	\$105	-	\$1,400
Manometer	N/A					N/A	

\* Subcontract



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Survey equipment (specify type)	1	Topcon	-	\$45	\$135	-	\$1,400
Utility class vehicles: (includes cargo vans and trucks)	1	Chev. Express Van	-	\$350	\$1,050	-	-
Transport Class Vehicles: (includes passenger cars, pick up trucks and passenger vans)	3	See below	Specify Mileage rate only:\$.55	N/A	N/A	N/A	N/A
<b>ADDITIONAL SPACE IS PROVIDED FOR EQUIPMENT THAT THE PROPOSER ANTICIPATES USING ON A REGULAR BASIS.</b>							
<b>WATER MONITORING EQUIPMENT</b>							
W1 Bailer (Stainless or Teflon)	1	Timco		\$10.00	\$30.00		\$150
W2 Conductivity, pH, Temp. Meter	1	Oakton		\$30.00	\$90.00		\$500
W3 Dissolved Oxygen Meter	1	YSI		\$35.00	\$105.00		\$1,000
W4 Redox Meter	1	Oakton		\$80.00	\$240.00		\$450
W5 Turbidity Meter	1	LaMotte		\$45.00	\$135.00		\$900
W6 Oil/Water Interface Probe	1	Heron		\$80.00	\$240.00		\$1,100
W7 Electric W.L. Indicator	1	Heron		\$30.00	\$90.00		\$500
W8 ISCO Stormwater Sampling System	1	----		-	\$600.00		(SUB)
W9 Multimeter (Flow thru Cell)	1	Horiba		\$145.00	\$435.00		\$4,000
W10 Downhole 500' Conductivity Meter	1	----		\$50.00	\$150.00		(SUB)
W12 ½" Bailers	1	\$10.00 each					
W20 Velocity Flowmeters	1	Sigma		\$60.00	\$180.00		\$900
<b>WATER PUMPING EQUIPMENT</b>							
P1 Peristaltic Pump	1	Geotech		\$40.00	\$120.00		\$1,100
P2 1" Centrifugal or Sump	1	Honda		\$50.00	\$150.00		\$500
P3 4" Submersible Pump (10-20 gpm)	1	Grundfos		\$82.00	\$246.00		\$2,900
P4 1" Pneumatic Diaphragm Pump	1	----		\$53.00	\$159.00		(SUB)
P5 Bladder Pump and Controller	1	QED		\$95.00	\$285.00		\$4,500
P6 2" Pneumatic Submersible w/ controller	1	QED		\$110.00	\$330.00		\$5,100
P7 2" Redi-Flo Pump w/ controller	1	Grundfos		\$175.00	\$525.00		\$2,900
P8 2" Flowmeter	1	Global		\$35.00	\$105.00		\$900



**12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES**

**EXHIBIT B PROPOSAL SCHEDULE**

Equipment Description	No. of Units	Capacity/size /model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
<b>BOATS</b>							
B1 Sampling Boat with Motor & Trailer	1	Tracker		\$120.00	\$360.00		\$5,800
B2 Pontoon Work Boat	1	Clark Boat		\$170.00	\$510.00		\$19,500
B3 Row Boat	1	Jon Boat		\$30.00	\$90.00		\$1,400
B4 Electrofishing Boat – Daily Rental Basis Only	1	Electrofisher		\$750.00	-		\$66,000
<b>AIR MONITORING EQUIPMENT</b>							
A1 LEL/O2 Meter	1	MSA		\$64.00*	\$192.00*		\$1,000
A2 CO2 meter	1	Geotech		\$64.00*	\$192.00*		\$2,500
A3 CO2, Methane, Oxygen Meter	1	Geotech		\$65.00*	\$195.00*		\$2,500
A4 FID	1	Photovac		\$145.00*	\$435.00*		\$8,300
A5 PID	1	Rae Systems		\$105.00*	\$315.00*		\$3,600
A6 Automatic Air Sampling Pump	1	SKC		\$60.00	\$180.00		\$600
A7 Manual Air Sampling Pump (Indicator Tubes Extra)	1	Draeger		\$20.00	\$60.00		\$300
A8 Air Flow meter (pilot, anemometer)	1	TSI		\$30.00	\$90.00		\$1,200
A10 Scintillator w/ 50' Probe	1	Ludlum		\$145.00	\$435.00		\$1,500
A11 Explosimeter	1	Rae Systems		\$52.50	\$157.50		\$900
A12 Explosimeter Plus Oxygen Meter	1	Rae Systems		\$50.00	\$150.00		\$900
A13 Weather Station	1	Davis		\$75.00	\$225.00		\$1,500
A14 H2S Monitor	1	Rae Systems		\$9.25	\$27.75		\$1,000
A15 4 Gas- H2S, CO, O2, LEL	1	MSA		\$75.00	\$225.00		\$1,000
A23 Radiation Detection Meter	1	Ludlum		\$40.00	\$120.00		\$1,100
A24 Combination PID/FID – Foxboro TVA 100	1	Thermo		\$135.00	\$405.00		\$8,300
<b>*\$27.50/use calibration charge applies</b>							
<b>SOIL SAMPLING EQUIPMENT</b>							
S1 Soil Sampler	1	AMS		\$55.00	\$165.00		\$4,500
S2 Power Auger	1	AMS		\$75.00	\$225.00		\$6,000
S3 Hand Auger	1	AMS		\$30.00	\$90.00		\$400
S6 Soil Gas Vapor Probe System (KVA,AMS)	1	AMS		\$55.00	\$165.00		\$4,500
S7 Sediment Dredge (Ekman/Ponar)	1	Wildco		\$35.00	\$105.00		\$500
<b>GEOPHYSICAL EQUIPMENT</b>							
G2 Ground Penetrating Radar	1	----		\$165.00	\$495.00		SUB
<b>OPERATIONS EQUIPMENT</b>							
O1 Air Compressor (up to 2 hp)	1	Gast		\$40.00	\$120.00		\$1,300
O2 Generator (up to 5.0 KW)	1	Matrix Oxygen		\$70.00	\$210.00		\$5,800
O3 Surveying Equipment (transit, rod and tape)	1	Topcon		\$45.00	\$135.00		\$2,000



12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: ARCADIS-US, Inc.  <p style="text-align: center;"><b>Labor Rates</b></p>			
Title/Class	Job Tasks	Straight Time	Overtime
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience <u>4</u> .	\$102.00	
Biologist (Senior)	See Biologist Specify minimum years of experience <u>8</u> .	\$142.00	
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$102.00	
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience <u>4</u> .	\$102.00	
Chemist (Senior)	See Chemist Specify minimum years of experience <u>8</u> .	\$142.00	
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$79.00	
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	*	
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	*	
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience <u>4</u> and specialty.	\$102.00	

\*Subcontracted Service

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience <u>8</u> and specialty.	\$142.00	
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience <u>4</u> and specialty.	\$102.00	
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience <u>8</u> and specialty.	\$142.00	
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience <u>20</u> and specialty.	\$260.00	
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$67.00	
Geologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience <u>4</u> .	\$102.00	
Geologist Senior	See geologist Specify minimum years of experience <u>8</u> .	\$142.00	

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

Title/Class	Job Tasks	Straight Time	Overtime
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience <u>4</u> .	\$102.00	
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience <u>8</u> .	\$142.00	
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$102.00	
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	Subcontractor	
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$142.00	
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience <u>3</u> .	\$102.00	
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience <u>6</u> .	\$142.00	
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$102.00	
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$52.00	
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience <u>15</u> .	\$153.00	
Technical Expert (provide specialty)	Provide description Specify minimum years of experience <u>20</u> and specialty.	\$217.00	

12PSX0097 ENVIRONMENTAL INVESTIGATION AND REMEDIAL ACTION SERVICES

EXHIBIT B PROPOSAL SCHEDULE

PROPOSER: <u>ARCADIS-US, Inc.</u>			
<b>Proposed and or additional labor not previously specified</b>			
		<b>Straight Time</b>	<b>Overtime</b>
<b>Title/Class</b>	<b>Job Tasks</b>		
Biologist, Staff	See Biologist (Project) Job Task Description Years of experience: 0-3	\$79.00	
Chemist, Staff	See Chemist (Project) Job Task Description Years of experience: 0-3	\$79.00	
GIS Specialist, Senior	See Cartographer/GIS Specialist Job Task Description – Years of experience: Min. 8	\$142.00	
Engineer Staff	See Engineer (Project) Job Task Description Years of experience: 0-3	\$79.00	
Geologist/ Hydrogeologist, Staff	See Geologist/Hydrogeologist (Project) Job Task Description – Years of experience: 0-3s	\$79.00	
Wetland/Soil Scientist, Staff	See Wetland/Soil Scientist (Project) Job Task Description – Years of experience: 0-3	\$79.00	
LEP, Senior	See LEP Job Task Description Years of experience: Min. 10	\$199.00	
Clerical, Staff	See Clerical Staff job Task Description Years of experience: Min. 10	\$73.00	
Draftsperson, Senior	See Cartographer/GIS Specialist Job Task Description- Min. 8	\$102.00	
Risk Assessor, Senior	See Risk Assessor job Task Description Years of experience: Min. 8	\$142.00	
Field Technician, Junior	See description of Field Technician: Max 2 Years	\$67.00	



# **CONTRACT**

**12PSX0097**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

**Aecom Technical Services, Inc..**

**FOR ENVIRONMENTAL INVESTIGATIVE AND REMEDIAL SERVICES**

**November 5, 2012**

## *Contract Table of Contents*

1. Definitions
2. Term of Contract; Contract Extension
3. Description of Goods and Services
4. Price Schedule, Payment Terms and Billing
5. Rejected Items; Abandonment
6. Order and Delivery
7. Contract Amendments
8. Assignment
9. Termination
10. Cost Modifications
11. Breach
12. Waiver
13. Open Market Purchases
14. Purchase Orders
15. Indemnification
16. Forum and Choice of Law
17. Contractor Guaranties
18. Implied Warranties
19. Goods, Standards and Appurtenances
20. Delivery
21. Goods Inspection
22. Setoff
23. Force Majeure
24. Advertising
25. Americans With Disabilities Act
26. Representations and Warranties
27. Representations and Warranties Concerning Motor Vehicles
28. Disclosure of Contractor Parties Litigation
29. Entirety of Contract
30. Exhibits
31. Executive Orders
32. Non-Discrimination
33. Tangible Personal Property
34. Whistleblowing
35. Notice
36. Insurance
37. Headings
38. Number and Gender
39. Parties
40. Contractor Changes
41. Further Assurances
42. Audit and Inspection of Plants, Places of Business and Records
43. Background Checks
44. Continued Performance
45. Working and Labor Synergies
46. Contractor Responsibility
47. Severability
48. Confidential Information
49. Interpretation
50. Cross-Default
51. Disclosure of Records
52. Summary of State Ethics Laws
53. Sovereign Immunity
54. Time of the Essence
55. Reserved
56. Campaign Contribution Restriction
57. Health Insurance Portability and Accountability Act
58. Protection of Confidential Information
59. Reserved
- EXHIBIT A** - Description of Goods and Services
- EXHIBIT B** - Price Schedule
- EXHIBIT C** - SEEC Form 11
- EXHIBIT D**- Table of Federal Regulations

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

This Contract (the “Contract”) is made as of the 25th day of October 2012, in the year 2012 , by and between, AECOM Technical Services, Inc. (the “Contractor,”) with a principal place of business at 555 South Flower Street, Suite 3700, Los Angeles, CA 90071-2300, acting by John L. Albrecht, L.E.P., its Southern New England Operations Manager and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Carol Wilson, its Procurement Director, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (b) Client Agency: Department of Administrative Services, Department of Energy and Environmental Protection, All Using State Agencies, and Political Subdivisions
  - (c) Confidential Information: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (d) Confidential Information Breach: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
  - (e) Contract: The agreement, as of its effective date, between the Proposer and the State for any or all Goods or Services at the Proposal price.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (f) **Awarded Contractor:** A person or entity who submits a Proposal and who executes a Contract.
- (g) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (h) **Day:** All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) **Force Majeure:** Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (j) **Goods:** For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Request for Proposals and set forth in Exhibit A.
- (k) **Goods or Services:** Goods, Services or both, as specified in the Request for Proposals and set forth in Exhibit A.
- (l) **Proposal:** A Proposer's submittal in response to a Request for Proposals.
- (m) **Proposer Parties:** A Proposer's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Proposer is in privity of oral or written contract and the Proposer intends for such other person or entity to Perform under the Contract in any capacity.
- (n) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (o) **Request for Proposals:** A State request inviting proposals for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) **Services:** The performance of labor or work, as specified in the Request for Proposals and set forth in Exhibit A.
- (q) **State:** The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (r) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
  - (s) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Term of Contract; Contract Extension. The Contract will be in effect from November 9, 2012 through October 31, 2017 The parties upon mutual agreement may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
- (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Proposer Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
  - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Proposer Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
9. Termination.
  - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
  - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
  - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
  - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
  - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
  - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of



Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

14. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
  - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
  - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
  - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
  - (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.
18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any part or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.
20. Delivery.
- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
  - (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
  - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Proposal.
  - (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
26. Representations and Warranties. The Contractor, and the Proposer, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Proposer Parties, as appropriate, that:
  - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
  - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
  - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
  - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
  - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
  - (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
  - (i) to the best of their knowledge, there are no Claims involving the Proposer, Proposer Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
  - (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
  - (k) their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
  - (l) the Proposal was not made in connection or concert with any other person, entity or Proposer, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Proposer, submitting a Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Proposer;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Proposer Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Proposer, as appropriate, represent and warrant for itself, the Contractor Parties and Proposer Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

§ 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.
- (a) For purposes of this Section, the following terms are defined as follows:
- (1) "Commission" means the Commission on Human Rights and Opportunities;
  - (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
  - (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;



(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government,

or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

(2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

(3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and

(5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical

assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g)
  - (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  - (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and
  - (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the

Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

33. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that

confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

34. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

If to D.E.E.P:

Department of Environmental Protection  
79 Elm Street  
Hartford, CT  
Attention: Thomas RisCassi

If to the Contractor:

AECOM Technical Services. Inc.  
500 Enterprise Drive, Suite 1A  
Rocky Hill, CT 06067  
Attention: John Albrecht

36. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) Pollution Liability Property Damage \$1,000,000.00 limit, \$1,000,000.00, accident, \$2,000,000.00 Aggregate
- (b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (e) Railroad Protective Liability: When and if necessary
- (f) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (g) Claims Made: Not acceptable with the exception of Professional Liability when specified.
- (h) Type U Underground Damage. May be part of Commercial General or Contractor's Protective Liability Policies. \$1,000,000.00 limit Accident \$2,000,000.00 Aggregate
- (i) Professional Liability Minimum \$5,000,000.00

37. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

38. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

39. Parties. To the extent that any Contractor Party or Proposer Party is to participate or Perform in any way, directly or indirectly in connection with the Proposal or the Contract, any reference in the Request for Proposals and the Contract to "Contractor" or "Proposer" shall also be deemed to include "Contractor Parties" or "Proposer Parties," respectively, as if such reference had originally specifically included "Contractor Parties" or "Proposer Parties," since it is the parties' intent for the terms "Contractor Parties" and "Proposer Parties" to be vested with the same respective rights and obligations as the terms "Contractor" and "Proposer."

40. Contractor Changes. The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:

- a) its certificate of incorporation or other organizational document;
- b) more than a controlling interest in the ownership of the Contractor; or
- c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS's written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

41. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those

provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

42. Audit and Inspection of Plants, Places of Business and Records.

- (a) Audit and Inspection of Plants, Places of Business and Records. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

43. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

44. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.



45. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
46. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.
47. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
48. Confidential Information. The State will afford due regard to the Proposer's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Proposal and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Proposer or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Proposer or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Proposal, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Proposer or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the

availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

49. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

50. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

51. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

52. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

53. Sovereign Immunity. The parties acknowledge and agree that nothing in the Request for Proposals or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
54. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
55. Reserved
56. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].
57. Health Care Portability and Accountability Act.
- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
  - (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
  - (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
  - (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
  - (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
  - (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Contract:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client Agency.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

**Contract # 12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide

an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the

information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or



(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.

(4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.

(5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees,

contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

58. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

59. Reserved

60. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

Contract # **12PSX0097**

Contract Document

RFP-50 Rev. 12/2011

Prev. Rev. 10/2011

AECOM Technical Services, Inc.

STATE OF CONNECTICUT  
Department of Administrative Services

By: \_\_\_\_\_

By: \_\_\_\_\_

John L. Albrecht, L.E.P.

Carol Wilson

Print or Type Name

Print or Type Name

Title: Southern New England Operations Mgr.

Title: DAS Procurement Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Proposer:** AECOM Technical Services, Inc.

**MATERIAL COSTS**

	Materials	Units	Unit Price
	17H drum	EACH	\$60.00
	17C drum	EACH	\$65.00
	17E drum	EACH	\$65.00
	Poly rolls/sheets	ROLL	\$95.00
	5 gallon plastic pails	EACH	\$12.00
	2" Locking well plugs	EACH	\$12.00
	4" Locking well plugs	EACH	\$25.00
	6" Locking well plugs	EACH	\$50.00
	Padlocks keyed to one master key	EACH	\$12.00
	MATERIALS THAT THE PROPOSER ANTICIPATES USING ON A REGULAR BASIS		
	Schedule 40 PVC well screen (1" diameter)	FOOT	\$10.00
	Schedule 40 PVC well screen (2" diameter)	FOOT	\$12.00
	Schedule 40 PVC well screen (4" diameter)	FOOT	\$15.00
	Schedule 40 PVC well screen (6" diameter)	FOOT	\$20.00
	Schedule 40 PVC well riser pipe (1" diameter)	FOOT	\$8.00
	Schedule 40 PVC well riser pipe (2" diameter)	FOOT	\$9.00
	Schedule 40 PVC well riser pipe (4" diameter)	FOOT	\$10.00
	Schedule 40 PVC well riser pipe (6" diameter)	FOOT	\$15.00
	Flush mount well cover (2" diameter)	EACH	\$100.00
	Flush mount well cover (4" diameter)	EACH	\$130.00
	Flush mount well cover (6" diameter)	EACH	\$175.00
	Stick-up steel well cover (4" diameter)	EACH	\$150.00
	Sand	50 LB BAG	\$10.00
	Bentonite	50 LB BAG	\$33.00
	Concrete	80 LB BAG	\$20.00
	Acetate liner for geoprobe core (5' length)	EACH	\$12.00
	Tubing for low flow groundwater sampling (teflon lined)	FOOT	\$1.85
	0.45 Micron Disposable Filter	EACH	\$12.00
	Disposable Nitrile Gloves (pair)	EACH	\$2.00
	Disposable Bailers	EACH	\$2.62
	Separate materials handling charges will not be allowed and must, therefore, be included in the unit price specified for each item.		

**Proposer:** AECOM Technical Services, Inc.

**EQUIPMENT RATES (includes overhead, i.e., taxes, fuel, maintenance, delivery)**

Equipment Description	No. of Units	Capacity/size/model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Drill rig (indicate size and type)	1 <sub>1</sub>	Mobile B-53 (truck)- includes 2-man Crew	N/A <sub>2</sub>	\$2,000.0 <sub>3</sub>	\$10,000.00 <sub>3</sub>	\$44,000.00 <sub>3</sub>	\$50,000.00 to \$300,000.00 <sub>4</sub>
Direct push drill rig (indicate size and type)	1 <sub>1</sub>	Geoprobe 660, PC111-includes 2-man crew	N/A <sub>2</sub>	\$2,000.0 <sub>3</sub>	\$10,000.00 <sub>3</sub>	\$44,000.00 <sub>3</sub>	\$50,000.00 to \$200,000.00 <sub>4</sub>
Flow through cell and data analyzer for low flow sampling (specify type)	1 <sub>1</sub>	YSI 6920 w/flow cell & 650 Hand Set (w/Turbidity)	N/A <sub>2</sub>	\$85.00	\$250.00	\$775.00	\$8,900.00
Magnetometer	1 <sub>1</sub>	Schonstedt GA72 CD Magnetometer	N/A <sub>2</sub>	\$30.00	\$60.00	\$170.00	\$980.00
XRF	1 <sub>1</sub>	INNOV – X portable XRF analyzer	N/A <sub>2</sub>	\$500.00	\$1,500.00	\$4,500.00	\$38,000.00
Metal detector	1 <sub>1</sub>	Schonstedt GA52-CX	N/A <sub>2</sub>	\$40.00	\$120.00	\$360.00	\$900.00
Photo ionization detector	1 <sub>1</sub>	MiniRAE 2000 w/ 10 6eV Lamp	N/A <sub>2</sub>	\$40.00	\$180.00	\$500.00	\$3,400.00
Flame Ionization Detector	1 <sub>1</sub>	PE Photovac MicroFID	N/A <sub>2</sub>	\$45.00	\$185.00	\$500.00	\$8,300.00
Multi-gas Meter (specify type)	1 <sub>1</sub>	VRAE LEL/O2/CO/H2S (including gas)	N/A <sub>2</sub>	\$50.00	\$120.00	\$450.00	\$1,825.00
Landfill Gas Meter	1 <sub>1</sub>	Gem2000 Landfill Monitor	N/A <sub>2</sub>	\$110.00	\$320.00	\$960.00	\$7,900.00
Core Drill	1 <sub>1</sub>	Manta II MK-4099 Vacuum pump Core Drill Rig	N/A <sub>2</sub>	\$175.00	\$500.00	\$2,000.00	\$1,795.00
Hammer Drill	1 <sub>1</sub>	2" Bosch SDS Rotary Hammer	N/A <sub>2</sub>	\$60.00	\$240.00	\$600.00	\$1,075.00
Manometer	1 <sub>1</sub>	TCI-Veloci-CALC+	N/A <sub>2</sub>	\$35.00	\$105.00	\$315.00	\$1,750.00

Equipment Description	No. of Units	Capacity/size/ model (specify for each unit)	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate	Original Purchase Price
Survey equipment (specify type)	1 <sub>1</sub>	Optical Level	N/A <sub>2</sub>	\$75.00	\$225.00	\$700.00	\$700.00
Utility class vehicles: (includes cargo vans and trucks)	1 <sub>1</sub>	Pickup Truck	N/A <sub>2</sub>	\$75.00	\$600.00	\$1,200.00	\$18,000.00
Transport Class Vehicles: (includes passenger cars, pick up trucks and passenger vans)	Multiple	Varies	Specify Mileage rate only: \$.61/mile	N/A	N/A	N/A	N/A
ADDITIONAL SPACE IS PROVIDED FOR EQUIPMENT THAT THE PROPOSER ANTICIPATES USING ON A <b>REGULAR</b> BASIS.							
Drill Rig	1 <sub>1</sub>	CME-45-B (track mounted) – includes 2 man crew	N/A <sub>2</sub>	\$2,300.00 <sub>3</sub>	\$11,500.00 <sub>3</sub>	\$50,600.00 <sub>3</sub>	\$50,000.00 to \$300,000.00 <sub>4</sub>
Waders	3	Bass Pro	\$2.00	\$6.00	\$25.00	\$88.00	\$110.00
Digital Camera	2	Olympus Stylus Tough	\$8.00	\$15.00	\$45.00	\$135.00	\$200.00
Water Level Indicator	1 <sub>1</sub>	Solist Model 101 100' Tape	N/A <sub>2</sub>	\$12.00	\$35.00	\$90.00	\$484.00
Oil Water Interface Probe	1 <sub>1</sub>	Solist Model 122 5/8" Diam; 100' Tape	N/A <sub>2</sub>	\$24.00	\$68.00	\$200.00	\$994.00
Peristaltic Pump	1 <sub>1</sub>	GeoTech Model II Variable Speed	N/A <sub>2</sub>	\$22.00	\$44.00	\$120.00	\$1,357.00
Turbidity Meter	1 <sub>1</sub>	LaMotte 220	N/A <sub>2</sub>	\$22.00	\$44.00	\$120.00	\$989.00
Radio Walky/Talky	1 <sub>1</sub>	Motorola MJ 270R (pair)	N/A <sub>2</sub>	\$5.00	\$15.00	\$45.00	\$99.77
<sub>1</sub> Not owned directly by AECOM. To be provided via equipment rental and/or subcontractor.							
<sub>2</sub> Hourly rate not available. Minimum charge for this unit is one full day.							
<sub>3</sub> In addition to rates specified, AECOM will competitively procure this equipment on a project specific basis to secure the most favorable rate.							
<sub>4</sub> Purchase price for new drill rig varies widely based on make/model/size. Actual purchase price may range from \$50,000 to \$300,000 or more depending on equipment included.							

**Proposer:** AECOM Technical Services, Inc.

**Labor Rates**

<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Biologist (Project)	Has a bachelor's or higher degree in biology, life sciences, botany, forestry, zoology, ecology or related field. Performs and supervises biological sampling and surveys, water, soil and sediment sampling to evaluate the effect of contaminants on plants and animals. Provides technical assistance to bioremediation projects. Specify minimum years of experience – 5 years.	\$85.00	\$85.00
Biologist (Senior)	See Biologist Specify minimum years of experience – 10 years.	\$110.00	\$110.00
Cartographer/GIS Specialist	Prepares maps on the extent of spill, topography, etc. to be digitized. Designs and draws original maps of cities and regions. Adapts existing maps. Uses geographic information systems and global positioning system to prepare maps on the extent of spill, topography, etc. Analyzes spatial and environmental data.	\$75.00	\$85.00
Chemist (Project)	Holds a bachelor's degree or higher in chemistry, biochemistry, chemical engineering or related field. Performs chemical analysis, sample acquisition, sets data quality objectives, prepares reports, performs chemical data validation.  Specify minimum years of experience – 5 years.	\$85.00	\$85.00
Chemist (Senior)	See Chemist Specify minimum years of experience – 10 years.	\$110.00	\$110.00
Draftsperson	Draws site plans, equipment layouts, and detailed drawings on CAD system.	\$65.00	\$97.50
Driller	Operates drill/geoprobe or well service rig for installation of monitoring wells, obtains samples, classifies materials.	\$80.00	\$105.00
Driller Assistant	Assists driller in all related operations of monitoring and recovery well installation and maintenance	\$60.00	\$80.00
Professional Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in relevant engineering discipline. Licensed for this occupation by the Department of Consumer Protection. Designs remedial and treatment systems, oversees construction of remedial systems. Affixes professional engineer seal to documents when required. Specify minimum years of experience __4__ and specialty.	\$95.00	\$95.00



<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Professional Engineer (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Professional Engineer Specify minimum years of experience – 7 years and specialty.	\$112.00	\$112.00
Engineer (Project) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	Holds a bachelor's degree or higher in civil, mechanical, electrical, chemical engineering or other relevant engineering discipline. Performs engineering tasks and analysis related to site investigation and designs remedial and treatment systems, oversees construction of remedial systems, landfills, etc. Specify minimum years of experience – 2 years and specialty.	\$82.00	\$82.00
Engineer – (Senior) (Specialties include: civil, electrical, mechanical, chemical, environmental, etc.).	See Engineer Specify minimum years of experience – 5 years and specialty.	\$95.00	\$95.00
Expert Witness	Provides credible testimony during a hearing or court trial. Specify minimum years of experience – 20 years and specialty.	\$200.00	\$200.00
Field Technician	Collects ground water samples, provides field support, uses, maintains and deploys equipment.	\$65.00	\$65.00
Geologist project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field. Oversees installation of monitoring wells, soil borings and other subsurface explorations. Collects and classifies soil and sediment samples, rock cores, surface water and ground water samples and other environmental media samples. Evaluates stratigraphy of soil and bedrock. Uses geophysical equipment to evaluate subsurface conditions and location of contaminants. Prepares and evaluates maps, cross section and other graphic representations of subsurface conditions. Prepares written reports, maps, cross sections, etc. Specify minimum years of experience – 4 years.	\$85.00	\$85.00
Geologist senior	See geologist Specify minimum years of experience – 8 years.	\$110.00	\$110.00

<b>Title/Class</b>	<b>Job Tasks</b>	<b>Straight Time</b>	<b>Overtime</b>
Hydrogeologist Project	Holds a bachelor's degree or higher in geology, hydrogeology, engineering geology, geological engineering, engineering geology, geophysics or related earth science field, and specialized training and experience in hydrogeology. Specializes in evaluating the movement of groundwater and the fate and transport of groundwater contaminants. Uses computer models to analyze and predict subsurface movement of groundwater and contaminants. Designs, supervises, and interprets results of ground water pump tests and slug tests. Prepares specifications for monitoring wells and potable water wells. Maps and evaluates ground water aquifers. Prepares written reports maps, cross sections, etc. Specify minimum years of experience – 5 years.	\$85.00	\$85.00
Hydrogeologist Senior	See Hydrogeologist Specify minimum years of experience – 8 years.	\$110.00	\$110.00
Industrial Hygienist	Has a bachelor's or higher degree in an appropriate technical discipline Oversees monitoring analytical methods required to detect the extent of exposure, and the engineering and other methods use for hazard control. Develops corrective measures to control health hazards by reducing or eliminating exposure.	\$85.00	\$85.00
Licensed Surveyor	Licensed for this professional title by the Department of Consumer Protection.	\$125.00	\$125.00
Licensed Environmental Professional	Has engineering, geology or hydrogeology training and is licensed by the board for this professional title.	\$135.00	\$135.00
Wetland /Soil Scientist project	Holds a bachelor's or higher degree in soil science, geology, earth science, biology, botany or other relevant discipline plus specialized training and experience in wetland evaluation or soil science. Delineates wetlands using recognized Federal or state methodologies. Interprets and evaluates soil types. Classifies soil samples and evaluates effects of contaminants on wetlands and related animal and plant communities. Specify minimum years of experience – 1 year.	\$75.00	\$75.00
Wetland /Soil Scientist Senior	See Wetland /Soil Scientist Specify minimum years of experience - 10 years.	\$125.00	\$125.00
Risk Assessor	Holds bachelor's or higher degree in biology, chemistry or other relevant natural or life sciences plus specialized training and experience in ecological or human health risk assessment. Evaluates actual or potential effects of physical or chemical contaminants on human health or on biological receptors.	\$85.00	\$85.00
Clerical Staff	Uses computers, typewriters and other office equipment to provide clerical and logistical support to project. May type reports, correspondence and other written material. May prepare bills, invoices, and related documents.	\$63.00	\$63.00
Project Manager	Oversees and coordinates projects from an administrative and operations standpoint. Initial contact at site for projects. DEP liaison. Specify minimum years of experience – 10 years.	\$135.00	\$135.00
Technical Expert (provide specialty)	Provide description Specify minimum years of experience – 15 years and specialty.	\$150.00	\$150.00

PROPOSER: **Proposer:** AECOM Technical Services, Inc.

**Proposed and or additional labor not previously specified**

Title/Class	Job Tasks	Straight Time	Overtime
Biologist (Staff)	See Biologist. Specify minimum years of experience – 0 years.	\$75.00	\$75.00
Chemist (Staff)	See Chemist. Specify minimum years of experience – 0 years.	\$75.00	\$75.00
Engineer (Staff)	See Engineer. Specify minimum years of experience – 0 years (applies to all specialties)	\$75.00	\$75.00
Geologist (Staff)	See Geologist. Specify minimum years of experience – 0 years.	\$75.00	\$75.00
Hydrogeologist (Staff)	See Hydrogeologist. Specify minimum years of experience – 0 years.	\$75.00	\$75.00
Project Manager (Senior)	See Project Manager. Specify minimum years of experience – 15 years.	\$150.00	\$150.00
Technical Expert (Senior)	See Technical Expert. Specify minimum years of experience – 20 years (applies to all specialties)	\$165.00	\$165.00
Principal	Directs overall office and program activities	\$175.00	\$175.00
Resident Representative	Performs field inspection and construction oversight services (minimum of 5 years experience)	\$100.00	\$100.00
Cartographer / GIS Specialist (Senior)	See Cartographer / GIS. Holds bachelor's degree in Geographic Information Systems or planning. Specify minimum years of experience – 8 years.	\$110.00	\$110.00
Industrial Hygienist (Senior)	See Industrial Hygienist. Holds CIH. Specify minimum years of experience – 12 years.	\$150.00	\$150.00
Risk Assessor (Senior)	See Risk Assessor. Also holds masters degree. Specify minimum years of experience – 12 years.	\$145.00	\$145.00



## Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations

This notice is provided under the authority of Connecticut General Statutes §9-612(G)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined on the reverse side of this page).

### CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract* or *state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor* or *principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

### DUTY TO INFORM

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

### PENALTIES FOR VIOLATIONS

Contributions of solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

**Civil Penalties** – Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties** – Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

### CONTRACT CONSEQUENCES

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/Contractor Limitations."



## DEFINITIONS

“State contractor” means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. “State contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person’s capacity as a state or quasi-public agency employee.

“Prospective state contractor” means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. “Prospective state contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person’s capacity as a state or quasi-public agency employee.

“Principal of a state contractor or prospective state contractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

“State contract” means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. “State contract” does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

“State contract solicitation” means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

“Managerial or discretionary responsibilities with respect to a state contract” means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

“Dependent child” means a child residing in an individual’s household who may legally be claimed as a dependent on the federal income tax of such individual.

“Solicit” means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

“Subcontractor” means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor’s state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. “Subcontractor” does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person’s capacity as a state or quasi-public agency employee.

“Principal of a subcontractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.