



**AGENDA REPORT
May 22, 2018**

FDEP Contract for Services Agreement Amended & Restated



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FDEP Contract for Services Agreement Amended & Restated

SUBJECT:

Amended and Restated Contract for Services between the Florida Department of Environmental Protection (FDEP) and Brevard County.

FISCAL IMPACT:

No General Fund Impact.

DEPT/OFFICE:

Natural Resources Management

REQUESTED ACTION:

It is requested that the Board: 1) accept and authorize the Chairman to execute the Amended and Restated Contract between Brevard County and the FDEP to provide pollutant storage system compliance verification related services in Brevard and Indian River Counties; 2) authorize the County Manager or designee to execute future contract amendments and annual renewals; 3) authorize the County's local program manager to execute task assignments consistent with the contract; and 4) authorize any necessary budget change requests to provide adequate staffing, operating budget and acquire the necessary capital items to meet contractual obligations.

SUMMARY EXPLANATION and BACKGROUND:

On May 9, 2017, the County Commission accepted a Contract for Services with the Florida Department of Environmental Protection (FDEP) to provide pollutant storage system compliance verification related services in Brevard and Indian River Counties. FDEP would like to replace the previously executed contract with the attached amended and restated contract that moves language out of the main contract and into attachments. None of the terms and conditions change.

Since November 1, 1988, the Natural Resources Management Department (NRMD) has been contracting with the FDEP to inspect all pollutant storage facilities (retail & non-retail) within Brevard County for compliance with Chapter(s) 62-761, Underground Storage Tank Systems and 62-762, Aboveground Storage Tank Systems, Florida Administrative Code, F.A.C. With the FDEP's "regional approach" for compliance assistance inspections, the FDEP has requested the Board continue administering the compliance verification program activities in both Brevard and Indian River Counties. In addition to routine annual compliance inspections, the NRMD also inspects the installation & removal of all regulated facilities. The NRMD currently inspects approximately 352 pollutant storage facilities on an annual basis ensuring that groundwater is protected from contamination and will assure this valuable resource is conserved for future generations.

The County will receive approximately \$215,000 during each contract year for work performed by the County. This money is expended for salaries, benefits, supplies, indirect costs and overhead for program oversight. All monies are derived from the FDEP and no general funds are contributed.

CLERK TO THE BOARD INSTRUCTIONS:

Sign and Attest two originals.

ATTACHMENTS:

Description

- ▢ **BC-20 - Risk Management**
- ▢ **BC-20 - County Attorney**
- ▢ **FDEP Amended & Restated Contract**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 23, 2018

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item II.A.1., Amended and Restated Contract with Florida Department of Environmental Protection (FDEP)

The Board of County Commissioners, in regular session on May 22, 2018, executed and approved the Amended and Restated Contract with FDEP, to provide pollutant storage system compliance verification related to services in Brevard and Indian River Counties; authorized the County Manager, or his designee, to execute future contract amendments and annual renewals; authorized the Program Manager to execute task assignments consistent with the Contract; and authorized any necessary budget change requests to provide adequate staffing, operating budget, and acquiring the necessary capital item to meet contractual obligations. Enclosed are two executed Contracts for your action.

Upon execution by FDEP, please return a fully-executed Contract to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

cc: Contracts Administration
County Manager
Finance
Budget

AMENDED AND RESTATED CONTRACT

This Amended and Restated Contract No. GC916 (Contract) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and Brevard County Board of County Commissioners (Contractor), on the date last signed below.

WHEREAS, the Department entered into the Contract with the Contractor to perform compliance inspections within the jurisdictional (geographical) boundaries of the specified counties, effective June 27, 2017; and

WHEREAS, the parties wish to amend and restate the Contract as set forth herein.

NOW, THEREFORE, the parties agree as follows:

SERVICES AND PERFORMANCE

1. SERVICES. Department does hereby retain, and Contractor agrees to perform compliance inspections within the jurisdictional (geographical) boundaries of the specified counties, including facilities registered to the Contractor as required by an executed Task Assignment(s) and Contractor's response thereto, incorporated herein by reference, and in accordance with **Attachment A**, Scope of Work - Level 1 and if applicable **Attachment B**, Scope of Work - Level 2 (Scope) and all exhibits and Attachments named and incorporated herein by reference. Contractor has been determined to be a vendor to the Department under this Contract.

2. WORK.

A. Contractor shall provide the services specified in the Scope (Work). Department shall authorize all work assignments by Task Assignment Notification Form (TA) or Task Assignment Change Order Form (TACO). Contractor shall perform the services required under this Contract in accordance with the guidance documents attached to each executed TA or TACO and in accordance with the provisions of this Contract. The Department reserves the right to update or amend the guidance documents as needed.

B. Contractor shall not commence Work until either 1) a TA/TACO has been fully executed, by both Department and Contractor, or 2) a PO or PO Change Order (CO) has been issued.

C. In the event services are required that are within the general description of services, but are not specifically set out in the Scope, Department and Contractor reserve the right to negotiate the Task Assignments covering performance of those required services.

D. There is no minimum amount of Work guaranteed as a result of this Contract. Any and all Work assigned will be at the sole discretion of the Department.

E. Department reserves the right to not authorize any Work, and may suspend or terminate for cause any Work assigned to Contractor under this or any other contract, if and in the event that the Department and Contractor (or any of its affiliates or authorized subcontractors) are adverse in any litigation, administrative proceeding or alternative dispute resolution, until such adverse relationship is resolved either by agreement or by final non-appealable order of a court.

3. STANDARD OF CARE FOR PERFORMANCE.

A. Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Department.

B. Contractor shall perform the services in a proper and satisfactory manner as determined by the Department. Any and all such equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the Contractor.

C. Contractor shall provide competent, suitably qualified personnel. Contractor must notify the Department's Contract Manager of any changes in the personnel identified in this Contract. Notification shall include a detailed explanation of the need to change personnel and the Contractor's documentation that proposed replacement personnel have equal or greater qualifications and experience.

D. Contractor shall perform the services in a manner consistent with that level of care and skill ordinarily

exercised by other contractors performing the same or similar services under similar circumstances at the time performed.

4. TERM OF CONTRACT.

A. Initial Term. This Contract shall begin July 1, 2017, and shall remain in effect for a period of ten (10) years, inclusive.

B. Renewal Term. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

This Contract may be renewed, in writing, on the same terms and conditions as the original Contract and any amendments thereto, for a period no greater than the term above, or three (3) years, whichever is longer. All renewals are contingent upon satisfactory performance by Contractor. Renewals may be for the entire period or in increments.

This Contract may not be renewed.

COMPENSATION

5. COMPENSATION.

A. As consideration for the services rendered by Contractor under the terms of this Contract, the Department shall pay the Contractor on a combination fee-schedule/cost-reimbursement basis not to exceed \$5,424,709.00. For the monthly operation and maintenance services as well as repair and emergency service calls, the Contractor shall be compensated on a fee-schedule basis at the rates specified in the executed task assignment. It is understood that fee schedule amounts include all costs necessary to perform the work outlined herein including, but not limited to, labor, fringe benefits, overhead, supplies, and travel, but do not include reimbursement for equipment purchases. Equipment purchases costing \$1,000.00 or more shall be reimbursed on a cost-reimbursement basis and must be pre-approved by the Department.

B. CONTRACTOR SHALL NOT COMMENCE WORK ON ANY SERVICES THAT WILL EXCEED THE COMPENSATION AMOUNT OF THE CONTRACT UNLESS AND UNTIL THE CONTRACT IS AMENDED. It is the Contractor's responsibility to know when the authorized compensation amount of the Contract will be reached.

6. ANNUAL APPROPRIATION. Department's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Florida Legislature. Authorization for continuation and completion of Work and payment associated therewith may be rescinded with proper notice at the discretion of the Department if state or federal appropriations are reduced or eliminated.

7. PAYMENT METHOD.

A. Contractor shall submit invoices as specified in **Attachment A and B**, under Payments section.

B. All invoices submitted must have sufficient detail for a proper pre-audit and post-audit review.

C. Department must approve the final deliverable(s) before the Contractor may submit a final invoice and any forms.

D. Each invoice, including appropriate supporting documentation as required herein, shall be submitted via email to the following:

Florida Department of Environmental Protection
PCAP Program
Attn: Department Contract Manager
Email address: STR_Invoices@dep.state.fl.us

Copy: Department District Task Manager and DEP Contract Manager

8. **TRAVEL.** An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- Travel is not authorized under this Contract.
- Travel costs are included in the fee schedule amounts of this Contract.
- Travel costs shall be paid on a cost-reimbursement basis in accordance with the paragraph contained herein of this Contract.

9. **EQUIPMENT.** Upon satisfactory completion of this Contract, the Contractor may retain ownership of the non-expendable personal property or equipment purchased under this Contract prior to the execution of an Amendment of said Contract. The following terms shall apply:

- A. The Contractor is responsible for any loss, damage, or theft of, and any loss, damage or injury caused by the use of, non-expendable personal property or equipment purchased with state funds and held in his possession for use in a contractual arrangement with the Department.
- B. In the event that the Department determines a need to loan equipment needed for the completion of services under this Contract to the Contractor, a Department Property Loan Agreement shall be completed and maintained in the Contract file.
- C. The Contractor shall have title to and use of any vehicle previously purchased under a former Contract, by its authorized employees only, for the authorized purposes of this Contract as long as the required work is being satisfactorily performed. In the event that this Contract is terminated for any reason, or the use of the vehicle is no longer needed (such as completion of the Contract), title of the vehicle shall be transferred to the Department.
- D. The Contractor is responsible for the implementation of adequate maintenance procedures to keep the non-expendable personal property or equipment in good operating condition.
- E. If the Contractor fails to perform its obligations under this Contract, the Contractor shall deliver possession and custody of all such equipment to the nearest District Office location, unless otherwise agreed, within thirty (30) calendar days of Contract termination.

10. **PROMPTPAYMENT.**

A. Department's Contract Manager shall have five (5) business days, unless a greater period is specified herein, to inspect and approve an invoice. Department shall submit a request for payment to DFS within twenty (20) business days; and DFS shall issue a warrant within ten (10) business days thereafter. Days are calculated from the latter of the date the invoice is received or services received, inspected, and approved. Invoice payment requirements do not start until a proper and correct invoice has been received. Invoices which have to be returned to the Contractor for correction(s) will result in an uncompensated delay in payment. A Vendor Ombudsman has been established within DFS who may be contacted if a Contractor is experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be contacted at (850) 413-5516, per Section 215.422, F.S.

B. If a warrant in payment of an invoice is not issued within forty (40) business days after receipt of a correct invoice and receipt, inspection, and approval of the goods and services, the Department shall pay the Contractor interest at a rate as established by Section 55.03(1), F.S., on the unpaid balance of the invoice. Interest payments of less than \$1 will not be issued unless Contractor requests such payment. The interest rate for each calendar year for which the term of this Contract is in effect can be

obtained from DFS' Vendor Ombudsman at the telephone numbers provided above, or the Department's Procurements Section at (850) 245-2361, per Section 215.422, F.S.

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

12. PHYSICAL ACCESS AND INSPECTION. As applicable, the Department personnel shall be given access to and may observe and inspect Work being performed under this Contract, including by any of the following methods:

A. Contractor shall provide access to any location or facility on which the Contractor is performing Work, or storing or staging equipment, materials or documents;

B. Contractor shall permit inspection of any facility, equipment, practices, or operations required in performance of any Work; and,

C. Contractor shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any Work or legal requirements.

PARTY REPRESENTATIVES

13. NOTICE. All notices and written communication between the parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.

14. IDENTIFICATION OF CONTRACT MANAGERS. All matters shall be directed to the Contract Managers for appropriate action or disposition. Any changes to the Contract Manager information identified below must be noticed, in writing, to the other party within ten (10) calendar days of the change. Either party may provide notice to the other party by email identifying a change of a designated Contract Manager and providing the new contact information for the newly designated Contract Manager. Such notice is sufficient to effectuate this change without requiring a written amendment to the Contract. Department and the Contractor Contract Managers and contact information are provided below:

Contractor	Department
Brevard County Board of County Commissioners Brevard County Natural Resources Management Department 2725 Judge Fran Jamieson Way, Bldg. A, Suite 219 Viera, Florida 32940 Attn: Douglas Divers Phone Number: (321)633-2017, Ext. 23 Email: doug.divers@brevardfl.gov	Department of Environmental Protection Division of Waste Management 2600 Blair Stone Road, MS 4500 Tallahassee, Florida 32399-2400 Attn: Roger Ruiz Phone Number: (850) 245-8854 Email: roger.ruiz@dep.state.fl.us

15. CHANGE ORDERS AND AMENDMENTS. Department may at any time, by written order designated to be a Change Order, make any change in the Work within the general scope of this Contract (e.g.,

specifications, method or manner of performance, requirements, etc.). All Change Orders are subject to the mutual agreement of both parties as evidenced in writing. Any change which causes an increase or decrease in Contractor's cost or time shall require an appropriate adjustment and modification by Task Assignment Change Order. Following execution of this Contract, any future Amendments or Change Orders may be executed by the Department representative with appropriate delegated authority.

CONSEQUENCES FOR FAILURE TO PERFORM

16. DISPUTE RESOLUTION. Any dispute concerning performance of the Contract shall be decided as follows:

A. All claims or disputes (Claims) must be presented to the Department in writing within thirty (30) days of the date such Claim arises (Notice of Dispute). The Notice of Dispute shall set out in detail all aspects of the disputed matters to be resolved, including the specific relief sought by the Contractor. Claims not presented by Notice of Dispute to Contract Manager shall be deemed waived by the Contractor.

B. The parties shall make a good faith attempt to resolve Claims which may arise from time to time by informal conference within ten (10) days of the Notice of Dispute.

C. Within ten (10) days of the informal conference, the Department shall provide Contractor a detailed written response to the Claim. A formal conference of the parties shall be convened no later than thirty (30) days following the Department's response to the Notice of Dispute, unless the parties mutually agree in writing to a longer period of time within which to schedule a formal conference.

- 1) All persons necessary to resolution of the claim or disputed matter shall attend the formal conference.
- 2) Minutes of the formal conference shall be taken, recorded, transcribed, and signed by the Department and the Contractor. Any terms of settlement and/or resolution reached shall be signed by all persons authorized to resolve the Claim.

D. Either party may request mediation of unresolved Claims, with the party seeking mediation to bear the expense of mediation.

E. Any Claim not resolved at formal conference or mediation, may be the subject of a complaint filed in a court of competent jurisdiction in Leon County, Florida.

17. FINANCIAL CONSEQUENCES FOR UNSATISFACTORY PERFORMANCE.

A. No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Contractor shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to Department, within thirty (30) days of being notified of the unsatisfactory deliverable.

B. If a satisfactory deliverable is not submitted within the specified time frame, the Department may, in its sole discretion: 1) assess liquidated damages if specified in the Contract or its attachments; 2) request from the Contractor agreement to a reduction in the amount payable; 3) suspend all Work until satisfactory performance is achieved, or 4) terminate the Contract for failure to perform.

18. CORRECTIVE ACTION PLAN. In the event that deliverables are unsatisfactory or are not submitted within the specified timeframe, the Department Contract Manager may, by letter specifying the failure of performance under the Contract, request that a proposed Corrective Action Plan (CAP) be submitted by the Contractor to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.

A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Contract Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Contractor in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Contractor shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised

proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of the Contract for cause as authorized in the Contract.

B. Upon the Department's notice of acceptance of a proposed CAP, the Contractor shall have ten (10) calendar days, or longer if specified in the approved CAP, to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Contractor of any of its obligations under the Contract. In the event the CAP fails to correct or eliminate performance deficiencies by the Contractor, the Department shall retain the right to require additional or further remedial steps, or to terminate the Contract for failure to perform. No actions approved by the Department or steps taken by the Contractor shall stop the Department from subsequently asserting any deficiencies in performance. Contractor shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Contract Manager.

C. Failure to respond to a Department request for a CAP shall result in suspension or termination of the Contract.

19. PAYMENT AND PERFORMANCE BONDS. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- No Payment or Performance bonds are required.
- Contractor shall provide executed Payment and Performance Bonds naming the Department as obligee, issued by a surety acceptable to the Department, in the amount(s) of \$_____.
- Contractor may be required to provide executed Payment and/or Performance Bonds naming the Department as obligee, issued by a surety acceptable to the Department, in an amount of up to one hundred and twenty percent (120%) of the total anticipated cost of any Work.

20. LIQUIDATED DAMAGES. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- No liquidated damages will be assessed.
- In addition to other remedies elsewhere in this Contract, and as provided by law, unless otherwise stipulated in the Scope, the Contractor hereby covenants and agrees to pay liquidated damages to the Department as follows:
 - A. Contractor acknowledges that time is of the essence for all services provided under this Contract, and whereas the actual damages to be suffered by late performance are incapable of accurate calculation, the parties agree to the following as a reasonable estimation thereof as liquidated damages. In addition to any other provisions of this Contract, in the event that the deliverable identified in the Scope, is not completed and submitted by the close of business on the date the deliverable is due, the compensation amount stated for that portion of the Work may be reduced by five percent (5%) per week for each week the deliverable is late, with the total amount of the liquidated damages not to exceed the total compensation amount of the Scope deliverable.
 - B. The date of submission shall be the date of receipt by the Department.
 - C. If no Department receipt date appears or the date is illegible, the date of submission shall be deemed to be five (5) days prior to receipt by the Contract Manager.
 - D. If completion is or will be justifiably delayed due to reasons as set out in paragraph contained herein, the Department may grant an extension of time as evidenced by a properly executed Amendment.
 - E. If the deliverable(s) fail to comply with the requirements of this Contract, or if questions arise from review and the Contractor is so notified and requested to respond, the Contractor shall furnish the required additions, deletions, or revisions in accordance with the Scope at no additional cost to the Department.

- F. If the additions, deletions, and revisions are not submitted to the Department's Contract Manager in accordance with the Scope, the compensation stated for that portion of the Work may be reduced by five percent (5%) for each week that the requested deliverable is late, as specified. The total reduction shall not exceed the total amount of the Work.
- G. Contractor's failure to respond to a request to correct the deliverables will result in termination of the Work and **forfeiture** of any unpaid balance for such deliverables. Additionally, the Department, at its discretion, may re-assign future Work.

21. RETAINAGE

A. Department reserves the right to establish the amount and application of retainage on the Compliance Routine Inspection (CRI) Work to a maximum of ten percent (10%). Any retainage to be applied shall be specified in the Task Assignment. Retainage shall be withheld from each payment to the Contractor pending satisfactory completion of CRI performance criteria listed in Task Assignment and approval of all deliverables.

B. Department reserves the right to withhold payment of retainage for the Contractor's failure to meet performance criteria listed in the Task Assignment. Department shall provide written notification to the Contractor of the Department's intent to withhold retainage on the Routine Compliance Inspection Work in the Task Assignment. Contractor's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by the Contractor.

C. If the Contractor fails to perform the requested Scope, or fails to perform the Compliance Routine Inspection Work in a satisfactory manner, Contractor shall forfeit its right to payment for the Compliance Routine Inspection Work and the retainage called for under the Task Assignment. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.

D. No retainage shall be released or paid for uncompleted Compliance Routine Inspection Work while a Contract is suspended.

E. Except as otherwise provided above, the Contractor shall be paid the retainage associated with the Work, provided the Contractor has completed the work and submits an invoice for retainage held in accordance with paragraph contained herein above.

LIABILITY

22. INSURANCE. To the extent required by law, the Contractor will be self-insured against, or will secure and maintain during the life of this Contract and any renewals, Workers' Compensation Insurance for all of its employees connected with the work of this project. The Contractor shall require any and all subcontractors, if authorized under this Contract, to provide Workers' Compensation Insurance for all employees unless such employees are covered by the protection afforded by Contractor. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under the Workers' Compensation statute, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of its employees not otherwise protected.

23. INDEMNIFICATION. The Contractor and the Department shall each be solely responsible for the negligent or wrongful acts of its respective employees and agents acting within the scope of their employment. Further, each party shall bear its own costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by its employees and agents acting within the scope of their employment. However, nothing contained herein shall constitute a waiver by the Contractor or the Department of its sovereign immunity or waiver or modification of Section 768.28, F.S.

THIRD PARTIES

24. SUBCONTRACTING. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- Contractor shall not subcontract any work under this Contract.
- A. Contractor shall not subcontract any work under this Contract without the prior written consent of the Department's Contract Manager. Department reserves the right to reject any proposed subcontractor based upon the Department's prior experience with subcontractor, subcontractor's reputation, or the Department's lack of adequate assurance of performance by subcontractor. Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract.
- B. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Contractor shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under any subcontract. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, with the exception of insurance requirements (paragraph contained herein), and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.

25. NONASSIGNABILITY. Contractor shall not sell, assign or transfer any of its rights, duties or obligations under this Contract (its **Rights and Duties**), without the prior written consent of the Department. Contractor shall remain liable for performance of its **Rights and Duties**, regardless of any assignment to or assumption by any third party, notwithstanding any approval thereof by the Department. However, the Department may expressly release the Contractor from any and all **Rights and Duties** through a novation accompanying an approved assignment. Department may assign the Department's **Rights and Duties**, but shall give prior written notice of its intent to do so to the Contractor. The foregoing notwithstanding, the Contractor hereby assigns to the State any and all claims it has with respect to the Contract under the antitrust laws of the United States and the State.

26. THIRD PARTY BENEFICIARIES. This Contract is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.

SUSPENSION AND TERMINATION

27. SUSPENSION.

A. Department may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for failure to perform, or as otherwise specified herein, such period of time as the Department may determine to be appropriate for any of the following reasons:

- 1.) Contractor fails to timely and properly correct deficiencies in or performs unsatisfactory work;
- 2.) Contractor's or subcontractor's insurer or surety notifies the Department that any of its required insurance or bonds has lapsed or will lapse, and the Contractor fails to provide replacement insurance or bonds acceptable to the Department before the insurance or bond cancellation or termination date;
- 3.) Contractor or subcontractor materially violates safety laws or other constraints;
- 4.) Department determines that there is a threat to the public health, safety or welfare that necessitates such suspension; or
- 5.) For the convenience of the Department.

B. If the performance of all or any part of the Work is suspended, delayed or interrupted for an unreasonable period of time by an act of the Department in administration of the Work, or by the Department's failure to act within a reasonable time to review or approve an invoice, the Department shall provide an equitable extension of the time allowed to complete the Work and modify the Scope accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption if and to the extent that:

- 1.) Performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or
- 2.) Equitable adjustment is provided for (or excluded) under any other provision of this Contract.

C. Contractor shall not be compensated for Work performed subsequent to a notice of suspension by Department.

28. TERMINATION.

A. Department may terminate this Contract at any time for cause, in the event of the failure of the Contractor to fulfill any of its obligations. Prior to termination, the Department shall provide ten (10) calendar days written notice of its intent to terminate for cause, including the reasons for such, and shall provide the Contractor an opportunity to consult with the Department regarding the reason(s) for termination. Contractor may be afforded the possibility of curing any default at the sole discretion of the Department.

B. The Department may terminate this Contract without cause and for its convenience by giving thirty (30) calendar days written notice to the Contractor. Termination for convenience shall not entitle either party to any indirect, special or resulting damages, lost profits, costs or penalties, and the Contractor shall be entitled only to recover those amounts earned by it for authorized deliverables completed up to the date of termination (or as may be agreed to in writing by the Department for completion of all or any portion of the Work in process).

GENERAL CONDITIONS

29. ATTORNEY'S FEES. In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorney's fees and costs.

30. CONFLICT OF INTEREST. Contractor covenants and warrants that it presently has no interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance of this Contract or the Services required hereunder.

31. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Contract including, but not limited to, local health and safety rules and regulations. This provision shall be included in all subcontracts issued as a result of this Contract.

32. DISQUALIFICATION.

A. The employment of unauthorized aliens by the Contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.

B. Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees used by the Contractor under this Contract, pursuant to State of Florida Executive Order No.: 11-116. Also, the Contractor shall include in related subcontracts, if authorized under this Contract, a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work.

C. If Contract value exceeds one (1) million dollars, Contractor certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Contractor agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Contract. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract for cause if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Contract. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

33. EXECUTION IN COUNTERPARTS. This Contract, and any Change Orders or Amendments thereto, may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a.pdf format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or.pdf signature page were an original thereof.

34. FORCE MAJEURE. Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees, subcontractors or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, hurricanes, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either 1) within five (5) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or 2) if delay is not reasonably foreseeable, within ten (10) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted by the Contractor against the Department. Contractor shall not be entitled to an increase in the price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to the Department, in which case the Department may 1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Department with respect to products subjected to allocation, or 2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or 3) terminate the Contract in whole or in part.

35. FORUM SELECTION, SEVERABILITY, AND CHOICE OF LAW. This Contract has been delivered in the State of Florida and shall be construed in accordance with substantive and procedural laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection with this Contract shall be brought in a court of competent jurisdiction located in Leon County, Florida.

36. GOVERNMENTAL RESTRICTIONS. If the Contractor believes that any governmental restrictions require alteration of the material, quality, workmanship or performance of the products offered under this Contract, the Contractor shall immediately notify the Department so in writing, identifying the specific

restriction and alteration. Department reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Department. Contractor's failure to timely notify the Department of its asserted belief shall constitute a waiver of such claim.

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

38. INTEGRATION. This Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and the Contractor. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Contract, unless otherwise provided herein. No oral agreements or representations shall be valid or binding upon the Department or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Department. Contractor may not unilaterally modify the terms of this Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Department's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

39. INTERPRETATION OF CONTRACT.

A. Where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Rules are to the adopted rules in the Florida Administrative Code; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate.

B. Contractor acknowledges and agrees that it has independently reviewed this Contract with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the terms. Accordingly, if an ambiguity in (or dispute regarding the interpretation of) this Contract shall arise, the Contract shall not be interpreted or construed against the Department, and, instead, other rules of interpretation and construction shall be used.

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

41. MYFLORIDAMARKETPLACE TRANSACTION FEE. The State of Florida, through DMS, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to Rule 60A-1.031, Florida Administrative Code, payments under this Contract are exempt from the MyFloridaMarketPlace transaction fee.

42. NONDISCRIMINATION.

A. Contractor certifies that no person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.

B. Contractor certifies that neither it nor any affiliate is or has been placed on the discriminatory vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services ("DMS") is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at (850) 487-0915.

C. Contractor shall comply with the Americans with Disabilities Act.

43. NON-SOLICITATION. Contractor covenants and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

44. NON-WAIVER OF RIGHTS. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other party under this Contract, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

45. ORDER OF PRECEDENCE. In the event of a conflict in terms between any of the components of this Contract, the order of precedence for resolving such conflict shall be as follows (1 being the highest precedence):

1. Body of this Contract;
2. Scope;
3. All other attachments to this Contract; and
4. Documents, agreements and exhibits incorporated herein by reference.

46. OWNERSHIP OF DOCUMENTS. All plans, specifications, maps, computer files, databases and/or reports prepared or obtained under this Contract, as well as data collected together with summaries and charts derived therefrom, shall be considered works made for hire and shall be and become the property of the Department upon completion or termination of this Contract, without restriction or limitation on their use, and shall be made available upon request to the Department at any time during the performance of such services and/or upon completion or termination of this Contract. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, F.S. Contractor shall not copyright any material and products or patent any invention developed under this Contract.

47. P.R.I.D.E. When possible, the Contractor agrees that any articles which are the subject of, or required to carry out, this Contract shall be purchased from P.R.I.D.E. as specified in Chapter 946, F.S., if available, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), F.S.; and for purposes of this Contract the person, firm or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with P.R.I.D.E. are concerned.

The "Corporation identified" is PRISON REHABILITATIVE INDUSTRIES AND DIVERSIFIED ENTERPRISES, INC. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.
12425 28th Street, North
St. Petersburg, Florida 33716-1826
Toll Free: 1-800-643-8459
Website: <http://www.pride-enterprises.org/>

48. PUBLIC ENTITY CRIMES. A person or affiliate (as defined) who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount for Category Two (as defined in Section 287.017, F.S.), for a period of 36 months from the date of being placed on the convicted vendor list, pursuant to Section 287.133, F.S. Contractor certifies that neither it nor any affiliate has been placed on such convicted vendor list, and shall notify the Department within five (5) days of its, or any of its affiliate's, placement thereon.

49. PUBLIC RECORDS. Public Records Requirements (Attachment F), as attached to this Contract, are hereby incorporated into the Contract.

50. RECORD KEEPING AND AUDIT.

A. Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following Contract completion or termination. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

B. The Contractor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Department's Inspector General in any investigation, audit, inspection, review, or hearing. The Contractor will comply with this duty and ensure that its subcontracts issued under this Contract, if any, impose this requirement, in writing, on its subcontractors.

51. REMEDIES. All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Department, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Department shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, to prevent a breach, continued breach or threatened breach of this Contract. No remedy or election hereunder shall be deemed exclusive. A failure to exercise or a delay in exercising, on the part of the Department, any right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

52. RESPECT OF FLORIDA. When possible, the Contractor agrees that any articles that are the subject of, or required to carry out, this Contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, F.S., in the same manner and under the same procedures set forth in Section 413.036(1) and (2), F.S.; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the state agency insofar as dealing with such qualified nonprofit agency is concerned.

The "nonprofit agency" identified is RESPECT of Florida which may be contacted at:

RESPECT of Florida.
2475 Apalachee Parkway, Suite 205
Tallahassee, Florida 32301-4946
(850) 487-1471
Website: www.respectofflorida.org

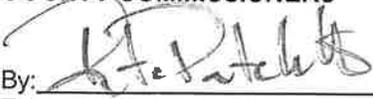
53. TAX EXEMPTION. Contractor recognizes that the Department is an agency of the State of Florida, which by virtue of its sovereignty is not required to pay any taxes on the services or goods purchased under the terms of this Contract. Department does not pay Federal excise or sales taxes on direct purchases of tangible personal property. Department will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages.

54. WARRANTY OF ABILITY TO PERFORM. Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of this Contract and any renewals.

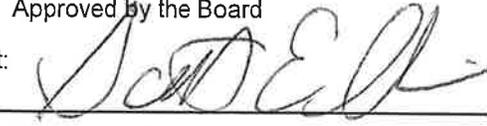
55. WARRANTY OF AUTHORITY. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to this Contract.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, the day and year last written below.

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

By: 
Title: Rita Pritchett, Chair

Date: MAY 22 2018
Approved by the Board

Attest: 
Scott Ellis, Clerk

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Secretary or designee

Date: _____

Reviewed for legal form and content:

Assistant County Attorney

FEID No. 59-6000523

List of attachments/exhibits included as part of this Contract:

<u>Specify Type/Letter</u>	<u>Description</u>
Attachment A	Scope of Work - Level One (6 pages)
Attachment B	Scope of Work - Level Two (7 pages)
Attachment C	Task Assignment Notification Form (5 pages)
Attachment D	Task Assignment Change Order Form (2 pages)
Attachment E	Contractor Affidavit/Release of Claims Form (1 Page)
Attachment F	Public Records Requirements (1 page)

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ATTACHMENT A

SCOPE OF WORK

STORAGE TANK SYSTEM COMPLIANCE ASSISTANCE

GUIDANCE DOCUMENTS

The Contractor shall perform the services required under this Contract in accordance with the guidance documents and the terms of this Contract. The guidance documents referenced herein shall be provided to the Contractor with each executed Task Assignment. The Department reserves the right to update or amend the guidance documents as needed.

WORK DESCRIPTION

1. The Contractor shall perform routine compliance inspections within the jurisdictional (geographical) boundaries of the specified counties as required by an executed Task Assignment(s) at the following Chapter 376, F.S., facilities: storage tanks regulated pursuant to Sections 376.30 – 376.317, F.S. (excluding cattle dip vats, dry-cleaning facilities and designated Brownfields) and Chapters 62-761 and 62-762, F.A.C. In addition, the Contractor shall perform closure inspections, installation inspections, discharge inspections, re-inspections, and complaint inspections as applicable, in accordance with each Task Assignment. All inspections shall be performed by an individual(s) in a position equivalent to an Environmental Specialist I level or higher. Beginning on the effective date of this Contract, the Contractor is authorized to enter private property in order to carry out inspections pursuant to Sections 403.091 and 403.858, Florida Statutes. However, an authorized facility representative must safely access all storage tank system components for inspection by the Contractor, and must demonstrate operational functionality of electronic equipment. This Scope of Work provides the minimum services the Department is seeking. The specific Tasks, Deliverables, Performance Measures, and Deliverable due dates will be included in each issued Task Assignment.

TASKS

2. Inspections must be performed in accordance with each executed Task Assignment.
 - A. Perform routine compliance inspections of facilities listed on each executed Task Assignment. Facilities not listed for inspection during the current executed Task Assignment will be prioritized to be inspected during subsequent Task Assignments.
 - B. Perform all closure inspections at known storage tank system closure activities (limited to Tanks, Sumps, Spill Containment Systems, Spill Buckets, Integral Piping and Bulk Product Piping and any other components as directed) and of past closure activities that have been discovered as having taken place without notification to ensure that the system or system component is properly closed in accordance with Chapters 62-761 and 62-762, F.A.C., as applicable.
 - C. Perform all installation inspections of known new installations and of past installations (limited to Tanks, Sumps, Spill Containment Systems, Spill Buckets, Integral Piping and Bulk Product Piping and any other components as directed) that have been discovered as having taken place without notification to ensure that the system or system component is properly constructed and installed in accordance with Chapters 62-761 and 62-762, F.A.C., as applicable.
 - D. Perform a discharge inspection at all facilities with known or suspected discharges within fourteen (14) calendar days of receipt of notification.
 - E. Re-inspections may only be performed for payment as needed to verify compliance of items identified as requiring a re-inspection, as referenced in the "Storage Tank System Program

Violation List" (Guidance Document A). For all other violations, a re-inspection may only be performed for payment if the Contractor and the Department Task Manager agree, prior to the inspection, that it is warranted.

- F. Respond to complaints concerning regulated facilities, and/or as directed by the Department Task Manager by performing a complaint inspection. Inspection findings concerning regulated facilities shall be documented in a complaint inspection report activity in FIRST. Complaint inspections not involving a regulated facility shall be documented in writing and/or as directed by the Department Task Manager.
3. Inspector responsibilities shall include:
- A. Contacting facility owners, operators, and/or other authorized representatives verbally or in writing, to schedule inspections. The Department Task Manager may require written notification of inspections if verbal methods have proven unsatisfactory. For routine compliance inspections, the Contractor shall provide outreach to each facility prior to the inspection by contacting the facility at least five (5) calendar days in advance of the inspection, reminding the facility to view the inspection videos on the Department's website prior to the upcoming inspection, and discussing recent previous inspections at the facility noting any violations cited. This outreach is to be documented in FIRST in a Phone or Electronic Communication Activity, depending on how the contact was made.
 - B. Conducting inspections with the owners, operators, and/or other authorized representatives of facilities for the purpose of determining compliance with Chapters 62-761 and 62-762, F.A.C., and Chapter 376, F. S.
 - C. Distributing registration forms or providing directions for the use of the Electronic Self Service Application Portal (ESSA) on the Department's website to all facilities that are determined by the Contractor to need registration updates.
 - D. All inspection activities shall be documented using the Florida Inspection Reporting for Storage Tanks (FIRST) database and FIRST equipment in accordance with the minimum standards referenced in the "FIRST User's Guide" (Guidance Document B).
 - E. All inspection reports shall be completed in accordance with the "Level of Effort Guidance" (Guidance Document F). The date and manner of the issuance of the inspection report to the facility owner/operator shall be documented in FIRST. This may be accomplished with the completion of one or more supporting activities in FIRST, such as a Non-Compliance Project Letter Activity, Issue Document Activity, and/or Electronic Communication Activity.
 - F. Responding to requests for public assistance both in the office and during inspections.
4. Perform Level 1 Compliance Assistance Actions.
- A. These actions shall include investigation and documentation of violations of Chapters 62-761 and 62-762, F.A.C., or the county's equivalent regulations, preparation of Compliance Assistance letters and related activities in accordance with the "Storage Tank System Program Violation List" (Guidance Document A) and "Level of Effort Guidance" (Guidance Document F).
 - B. An individual(s) in a position equivalent to an Environmental Specialist II level or higher shall conduct Level 1 Compliance Assistance activities. Compliance Assistance letters may be prepared and sent by an individual(s) at the Environmental Specialist I level under the direction of an individual at the Environmental Specialist II level or higher.
 - C. All Compliance Assistance letters shall be on Department forms, in Department format, or have Department approval.
 - D. Compliance Assistance letters shall be issued through FIRST in accordance with the "FIRST User's Guide" (Guidance Document B) to ensure that the letters are posted to the OCULUS

document management system.

- E. If there is any indication that Compliance Assistance actions are not being performed in accordance with "Level of Effort Guidance" (Guidance Document F); the Department Task Manager may request the submission of a Corrective Action Plan (CAP), and may recommend to the Department Contract Manager to hold invoices until such actions are being performed to the satisfaction of the Department Task Manager. The Department Task Manager shall be responsible for reviewing the CAP and notifying the Contractor if the CAP is approved or in need of revision.
- F. The Contractor must maintain the administrative organization, staff, financial and other resources necessary to effectively administer the requirements of this Attachment. Failure to do so is a material breach of this Contract.
- G. This Attachment specifically does not include actions associated with the cleanup or enforcement of Contractor-owned or operated petroleum storage systems or any discharge(s) associated with them.

ASSESSMENT OF PERFORMANCE LEVELS

- 5. The Contractor shall perform inspections as directed in paragraph 4, above, and assess performance levels monthly to determine its progress towards completion of each Task Assignment. Upon discovery of any problems that would delay or prevent the timely progress and completion of each Task Assignment, the Contractor shall notify the Department Task Manager.
- 6. Following the effective date of each Task Assignment, the Contractor must have completed the following percentage of the required routine compliance inspections unless otherwise indicated in the Task Assignment:
 - A. After four (4) months, thirty three percent (33%) of inspections must have been completed.
 - B. After eight (8) months, sixty six percent (66%) of inspections must have been completed.
 - C. After twelve (12) months, one hundred percent (100%) of inspections must have been completed.
- 7. If the actual number of completed inspections falls below these levels, then the Contractor must submit a CAP to the Department Task Manager, and associated invoices will be held by the Department Contract Manager until these completion percentages are subsequently reached.
- 8. If there is any indication that other required inspections or activities are not being performed, the Department Task Manager may request the submission of a CAP and may recommend to the Department Contract Manager to hold invoices until such actions are being performed to the satisfaction of the Department Task Manager.
- 9. The Department Task Manager shall be responsible for reviewing all CAPs and notifying the Contractor if the CAP is approved or is in need of revision.
- 10. A completion rate of 100 percent is required for those activities described in Paragraph 1, above, and as set forth in each Task Assignment, unless otherwise indicated in the Task Assignment.
- 11. The Department shall authorize the Contractor to provide services under this Contract utilizing the Task Assignment Notification Form, attached to the Contract as Attachment C. The Contractor acknowledges that no work shall be performed until a Task Assignment authorizing work has been fully executed by the Department and the Contractor. If, during the term of an executed Task Assignment, a modification of the Task Assignment is needed, the Department may issue a new Task Assignment Form clearly marked with the original task number and the appropriate amendment

number, detailing the revised description of the work to be performed. As with the original Task Assignment, all amendments to Task Assignments must be executed by both the Department and the Contractor prior to the work being performed.

SCOPE REQUIREMENTS

12. The Contractor shall administer the compliance verification program, provide technical assistance, and perform level 1 Compliance Assistance actions. Data generated from all inspections conducted under the direction of the Department shall be entered into FIRST, and completed, prior to the submittal of an invoice to the Department Contract Manager.
13. The Contractor shall comply with all provisions of this Contract, verify facility compliance with Chapter 376, F.S., and Chapters 62-761 and 62-762, and be knowledgeable of the differences between the state and federal environmental statutes and rules applicable to underground storage tanks.
14. The Contractor shall require that qualified individuals perform field inspections and that they receive training on Chapters 62-761 and 62-762, and Chapter 376, F.S.
15. The Contractor shall provide a sufficient number of qualified staff to satisfactorily complete all the responsibilities included in this Contract. All individuals hired after the effective date of this Contract shall possess qualifications equivalent to Department position levels as specified in this Contract.
16. The Contractor shall determine the accurate latitude and longitude coordinates for each regulated facility inspected using Department-approved procedures and ensure the proper entry of this data into the Department inspection database.
17. The Contractor shall review closure reports filed by facility owners, operators, or authorized representatives to ensure that the Department's "Instructions for Conducting Sampling During Aboveground Storage Tank Closure" (Guidance Document C1) and "Instructions for Conducting Sampling During Underground Storage Tank Closure" (Guidance Document C2) have been followed. In cases where these requirements have not been met, the Contractor shall initiate Level 1 Compliance Assistance actions to compel compliance. In cases where these requirements have been met and none of the Department's cleanup target levels have been exceeded, the Contractor shall issue a Closure Report Review Letter for the system or component described in the Closure Report indicating the Closure Report meets the requirements of Chapter 62-761 and/or 62-762, F.A.C. In cases where cleanup target levels have been exceeded and it has been determined to be a new discharge, the Contractor shall prepare and send a Site Assessment Report request letter to the facility owner and operator, if appropriate. In addition, the Contractor shall provide notification to the Department Task Manager within thirty (30) days of the determination of a new discharge at a facility.
18. The Contractor shall prepare and send a Site Assessment Report request letter to the facility owner and operator, if appropriate, in cases where a new discharge has been discovered related to a regulated storage tank system, but unrelated to a closure as discussed in paragraph 13., above. In addition, the Contractor shall provide within thirty (30) days of the determination of a new discharge at a facility.
19. The Contractor shall maintain its paper files on regulated facilities that were composed prior to the FIRST database implementation, as well as documentation from the facility that may not be available in FIRST, such as closure reports. In the event a case referral to the Department District Office for further enforcement is necessary, a copy of any documents pertinent to the case that are not available in FIRST shall be submitted to the Department District Office in accordance with the "Guidelines for Case Referrals" (Guidance Document G).
20. Facility files must be kept until the site has been determined closed. Once the facility has been closed for five (5) years, the records may be transmitted electronically to the Department Contract Manager

in Tallahassee for preservation, unless the Contractor is subject to more stringent local record retention requirements. Copies can be maintained by the Contractor at the Contractor's expense. If, for any reason, the Department's contractual arrangement with the Contractor to perform the inspection program (through this Contract or any future contracts) ceases, the Contractor shall transmit electronic copies of all documents to the Department Contract Manager.

21. The Contractor shall provide attendance of at least one program staff member at scheduled meetings, conferences, and teleconferences. The Department Task Manager may authorize attendance at a location other than the District Office. The Contractor shall provide attendance of additional staff members as requested by the Department.
22. The Contractor shall ensure that all field personnel receive the health and safety training required to meet OSHA standards (an initial 24 or 40-hour course within 6 months of employment under this Contract, followed by an annual 8-hour refresher course).
23. The Contractor shall supervise the Local Compliance Program with an individual at a minimum equivalent to the Department's Environmental Specialist III personnel category.
24. The Contractor shall provide copies of applicable rules, inspection forms, and other program/public assistance information to the public and regulated interests. However, this provision does not authorize photocopying of reference documents in violation of copyright law.
25. The Contractor shall maintain financial books, records, and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles consistently applied. All books, records, and documents pertinent to performance under this Contract shall be maintained for the entire term of this Contract and for five years following the expiration or termination of this Contract. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the entire term of this Contract and for five years following the expiration or termination of this Contract. A penalty of 8.3% of the current Task Assignment amount will be assessed for each year that shows insufficient record keeping.
26. The Contractor shall not allocate funding to non-program activities outside the scope of this Contract or any Task Assignment. Sections 376.3071 and 376.11, F.S., prohibit the use of Inland Protection Trust Fund (IPTF) and Florida Coastal Protection Trust Fund (FCPTF) moneys for purposes other than those specified in these sections.
27. Access to Department databases shall be made by using an Internet connection. Therefore, the Contractor is responsible for subscribing to and paying for all charges related to use of the services of a reputable Internet service provider. The Contractor must have a dedicated Internet line for FIRST.
28. The Contractor shall provide a written response within forty-five (45) days to the Program Review findings conducted in accordance with paragraph 37, below, and at a minimum, provide details on any corrective actions that will be implemented.
29. The Contractor shall submit a satisfactory Corrective Action Plan to the Department Task Manager upon notification of a score below seventy-five (75) on the Program Review within fourteen (14) calendar days of notification of the score. Because a score below seventy-five (75) reflects an unacceptable level of performance, if the Contractor receives a score below seventy-five (75) may result in contract termination.
30. The Contractor is responsible for the professional quality, technical accuracy, and coordination of all reports and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its reports and other services.

DEPARTMENT RESPONSIBILITIES

31. The Department shall serve in an advisory capacity to the Contractor. The Department shall make

legal interpretations of Department rules, which shall be binding with respect to the Contractor's ordinances to the extent that those ordinances adopt the provisions of Chapters 62-761 and 62-762, F.A.C., as required by this Contract.

32. The Department shall review completed inspection reports when and as deemed necessary.
33. The Department shall provide program and regulatory guidance for the Contractor. The Department shall provide training in new technology and program management changes as necessary.
34. The Department shall conduct enforcement activities for violations of Chapters 62-761 and 62-762, F.A.C., when case referrals are properly made and forwarded to the District Office in accordance with the "Guidelines for Case Referrals" (Guidance Document G).
35. The Department shall provide information to the Contractor about Department registered storage tank system equipment and alternate procedures (waivers, variances, or registrations).
36. At least once annually, the Department shall perform a Program Review using the "Compliance Verification Program Local Program Review Form" (Guidance Document D), and provide a copy of the Program Review findings to the Contractor upon completion of the Program Review. The Department may conduct inspections, including accompanied inspections and follow-up inspections, at any reasonable time. In addition, the Department may also conduct facility file reviews through FIRST at any time. The Department Task Manager may perform additional program reviews, as deemed necessary, to insure the required performance of the Contractor. The Department Task Manager may forgo a Program Review for the next Task Assignment for a Contractor that receives a score of 95 or greater on the Program Review during the current Task Assignment.

PAYMENTS

37. The Contractor shall submit invoices on a monthly basis. Each invoice shall be submitted using the "Contractual Services Invoice" (Guidance Document E). Each invoice is due no later than the 15th day of the month following the month of services. The invoice shall be submitted electronically to the Department Contract Manager at STR_Invoices@dep.state.fl.us and copied to the Department Task Manager. Reimbursement requests for the purchase of non-expendable equipment costing \$1,000 or more must include copies of invoices or receipts to document the charges.

DOCUMENTATION

38. Prior to the submittal of each month's invoice to the Department Contract Manager, the Contractor shall complete and submit electronically the "Payment Calculation Sheet" (Guidance Document H) for the month to the Department Task Manager no later than the 10th day of the month following the month of services. The Department Task Manager shall review the monthly Payment Calculation Sheet for accuracy and completeness and shall return the approved Payment Calculation Sheet to the Contractor for submittal with the monthly invoice to the Department Contract Manager in Tallahassee, Florida for processing. If the Contractor fails to perform as directed by the terms of this Contract, the Department shall return the unpaid invoice to the Contractor documenting the areas in which the Contractor has failed to meet its contractual obligations.

MANAGEMENT

39. The Department Contract Manager is Roger Ruiz, Phone (850) 245-8854. The Contractor's Contract Manager is Douglas Divers, Phone (321) 633-2017, Ext. 23. Each Task Assignment will identify the Department Task Manager and the Contractor's Task Manager. All matters relating to a specific Task Assignment shall be directed to the Department Task Manager for appropriate action or disposition. All matters relating to this Contract shall be directed to the Department Contract Manager.

ATTACHMENT B

SCOPE OF WORK

STORAGE TANK SYSTEM COMPLIANCE ASSISTANCE AND ENFORCEMENT ACTIONS

GUIDANCE DOCUMENTS

The Contractor shall perform the services required under this Contract in accordance with the guidance documents and the terms of this Contract. The guidance documents referenced herein shall be provided to the Contractor with each executed Task Assignment. The Department reserves the right to update or amend the guidance documents as needed.

WORK DESCRIPTION

1. The Contractor shall perform routine compliance inspections within the jurisdictional (geographical) boundaries of the specified counties as required by an executed Task Assignment(s) at the following Chapter 376, F.S., facilities: storage tanks regulated pursuant to Sections 376.30 – 376.317, F.S. (excluding cattle dip vats, dry-cleaning facilities and designated Brownfields) and Chapters 62-761 and 62-762, F.A.C., In addition, the Contractor shall perform closure inspections, installation inspections, discharge inspections, re-inspections, and complaint inspections as applicable, in accordance with each Task Assignment. All inspections shall be performed by an individual(s) in a position equivalent to an Environmental Specialist I level or higher. Beginning on the effective date of this Contract, the Contractor is authorized to enter private property in order to carry out inspections pursuant to Sections 403.091 and 403.858, Florida Statutes. However, an authorized facility representative must safely access all storage tank system components for inspection by the Contractor, and must demonstrate operational functionality of electronic equipment. This Scope of Work provides the minimum services the Department is seeking. The specific Tasks, Deliverables, Performance Measures, and Deliverable due dates will be included in each issued Task Assignment.

TASKS

2. Inspections must be performed in accordance with each executed Task Assignment.
 - A. Perform routine compliance inspections of facilities listed on each executed Task Assignment. Facilities not listed for inspection during the current executed Task Assignment will be prioritized to be inspected during subsequent Task Assignments.
 - B. Perform all closure inspections at known storage tank system closure activities (limited to Tanks, Sumps, Spill Containment Systems, Spill Buckets, Integral Piping and Bulk Product Piping and any other components as directed) and of past closure activities that have been discovered as having taken place without notification to ensure that the system or system component is properly closed in accordance with Chapters 62-761 and 62-762, F.A.C., as applicable.
 - C. Perform all installation inspections of known new installations and of past installations (limited to Tanks, Sumps, Spill Containment Systems, Buckets, Integral Piping and Bulk Product Piping and any other components as directed) that have been discovered as having taken place without notification to ensure that the system or system component is properly constructed and installed in accordance with Chapters 62-761 and 62-762, F.A.C., as applicable.
 - D. Perform a discharge inspection at all facilities with known or suspected discharges within fourteen (14) calendar days of receipt of notification.
 - E. Re-inspections may only be performed for payment as needed to verify compliance of items identified as requiring a re-inspection, as referenced in the "Storage Tank System Program Violation List" (Guidance Document A). For all other violations, a re-inspection may only be

performed for payment if the Contractor and the Department Task Manager agree, prior to the inspection, that it is warranted.

- F. Respond to complaints concerning regulated facilities, and/or as directed by the Department Task Manager by performing a complaint inspection. Inspection findings concerning regulated facilities shall be documented in a complaint inspection report activity in FIRST. Complaint inspections not involving a regulated facility shall be documented in writing and/or as directed by the Department Task Manager.
3. Inspector responsibilities shall include:
- A. Contacting facility owners, operators, and/or other authorized representatives verbally or in writing, to schedule inspections. The Department Task Manager may require written notification of inspections if verbal methods have proven unsatisfactory. For routine compliance inspections, the Contractor shall provide outreach to each facility prior to the inspection by contacting the facility at least five (5) calendar days in advance of the inspection, reminding the facility to view the inspection videos on the Department's website prior to the upcoming inspection, and discussing recent previous inspections at the facility noting any violations cited. This outreach is to be documented in FIRST in a Phone or Electronic Communication Activity, depending on how the contact was made.
 - B. Conducting inspections with the owners, operators, and/or other authorized representatives of facilities for the purpose of determining compliance with Chapters 62-761 and 62-762, F.A.C., and Chapter 376, F. S.
 - C. Distributing registration forms or providing directions for the use of the Electronic Self Service Application Portal (ESSA) on the Department's website to all facilities that are determined by the Contractor to need registration updates.
 - D. All inspection activities shall be documented using the Florida Inspection Reporting for Storage Tanks (FIRST) database and FIRST equipment in accordance with the minimum standards referenced in the "FIRST User's Guide" (Guidance Document B).
 - E. All inspection reports shall be completed in accordance with the "Level of Effort Guidance" (Guidance Document F). The date and manner of the issuance of the inspection report to the facility owner/operator shall be documented in FIRST. This may be accomplished with the completion of one or more supporting activities in FIRST, such as a Non-Compliance Project Letter Activity, Issue Document Activity, and/or Electronic Communication Activity.
 - F. Responding to requests for public assistance both in the office and during inspections.
4. Perform Level 1 Compliance Assistance and Level 2 enforcement actions in accordance with Exhibit A, Storage Tank System Compliance Assistance and Enforcement Actions, attached hereto and made a part hereof.
- A. Level 1 Compliance Assistance actions.
 - (1) These actions shall include investigation and documentation of violations of Chapters 62-761 and 62-762, F.A.C., or the county's equivalent regulations, preparation of Compliance Assistance letters and related activities in accordance with the "Storage Tank System Program Violation List" (Guidance Document A) and "Level of Effort Guidance" (Guidance Document F).
 - (2) An individual(s) in a position equivalent to an Environmental Specialist II level or higher shall conduct Level 1 Compliance Assistance activities. Compliance Assistance letters may be prepared and sent by an individual(s) at the Environmental Specialist I level under the direction of an individual at the Environmental Specialist II level or higher.

- (3) All Compliance Assistance letters shall be on Department forms, in Department format, or have Department approval.
- (4) Compliance Assistance letters shall be issued through FIRST in accordance with the "FIRST User's Guide" (Guidance Document B) to ensure that the letters are posted to the OCULUS document management system.
- (5) If there is any indication that Compliance Assistance actions are not being performed in accordance with "Level of Effort Guidance" (Guidance Document F); the Department Task Manager may request the submission of a Corrective Action Plan (CAP), and may recommend to the Department Contract Manager to hold invoices until such actions are being performed to the satisfaction of the Department Task Manager. The Department Task Manager shall be responsible for reviewing the CAP and notifying the Contractor if the CAP is approved or in need of revision.

B. Level 2 enforcement actions.

- (1) These actions shall include initiation and completion of administrative and judicial enforcement actions as lead party; preparing, delivering, and executing enforcement documents including Warning Letters, Consent Orders, Notices of Violation, and Final Orders; taking lead responsibility in the discovery process; determining appropriate judicial remedies, including civil penalties, injunctive relief, and assessment of damages; and performing post-judgment enforcement activities.
 - (2) All Level 2 enforcement actions shall be conducted under the supervision of an attorney licensed to practice law in the State of Florida and employed by the Contractor.
 - (3) All enforcement documents shall be on Department forms, in Department format, or have Department approval unless documents are being filed as part of a legal proceeding in which case the rules of procedure for the body before which the legal proceeding is taking place shall apply.
 - (4) Any penalties assessed under this Exhibit shall be in accordance with "DEP Directive 923: Settlement Guidelines for Civil and Administrative Penalties" (Guidance Document I).
5. The Contractor must perform the enforcement actions specified in this Exhibit under its own ordinances. Therefore, the Contractor must have and maintain provisions adopting Chapters 62-761 and 62-762, F.A.C., or their equivalent and penalty authority equivalent to that set forth in Sections 403.141 and 403.161, F.S., as their own local ordinances during the term of this Contract. Failure to maintain such requirements shall result in the unilateral termination of this Contract by the Department.
 6. The Contractor must maintain the administrative organization, staff, financial and other resources necessary to effectively administer the requirements of this Attachment. Failure to do so is a material breach of this Contract.
 7. This Attachment specifically does not include actions associated with the cleanup or enforcement of Contractor-owned or operated petroleum storage systems or any discharge(s) associated with them.
 8. If there is any indication that enforcement actions are not being performed or are inadequate, the Department Task Manager may request the submission of a CAP and may recommend to the Department Contract Manager to hold invoices until such actions are being performed to the satisfaction of the Department Task Manager. The Department Task Manager shall be responsible for reviewing the CAP and notifying the Contractor if the CAP is approved or in need of revision.

ASSESSMENT OF PERFORMANCE LEVELS

9. The Contractor shall perform inspections as directed in paragraph 4, above, and assess performance levels monthly to determine its progress towards completion of each Task Assignment. Upon

discovery of any problems that would delay or prevent the timely progress and completion of each Task Assignment, the Contractor shall notify the Department Task Manager.

10. Following the effective date of each Task Assignment, the Contractor must have completed the following percentage of the required routine compliance inspections unless otherwise indicated in the Task Assignment:
 - A. After four (4) months, thirty three percent (33%) of inspections must have been completed.
 - B. After eight (8) months, sixty six percent (66%) of inspections must have been completed.
 - C. After twelve (12) months, one hundred percent (100%) of inspections must have been completed.
11. If the actual number of completed inspections falls below these levels, then the Contractor must submit a CAP to the Department Task Manager, and associated invoices will be held by the Department Contract Manager until these completion percentages are subsequently reached.
12. If there is any indication that other required inspections or activities are not being performed, the Department Task Manager may request the submission of a CAP and may recommend to the Department Contract Manager to hold invoices until such actions are being performed to the satisfaction of the Department Task Manager.
13. The Department Task Manager shall be responsible for reviewing all CAPs and notifying the Contractor if the CAP is approved or needs revision.
14. A completion rate of 100 percent is required for those activities described in Paragraph 1, above, and as set forth in each Task Assignment, unless otherwise indicated in the Task Assignment.
15. The Department shall authorize the Contractor to provide services under this Contract utilizing the Task Assignment Notification Form, attached to the Contract as Attachment C. The Contractor acknowledges that no work shall be performed until a Task Assignment authorizing work has been fully executed by the Department and the Contractor. If, during the term of an executed Task Assignment, a modification of the Task Assignment is needed, the Department may issue a new Task Assignment Form clearly marked with the original task number and the appropriate amendment number, detailing the revised description of the work to be performed. As with the original Task Assignment, all amendments to Task Assignments must be executed by both the Department and the Contractor prior to the work being performed.

SCOPE REQUIREMENTS

16. The Contractor shall administer the compliance verification program, provide technical assistance, and perform level 1 Compliance Assistance actions. Data generated from all inspections conducted under the direction of the Department shall be entered into FIRST, and completed, prior to the submittal of an invoice to the Department Contract Manager.
17. The Contractor shall comply with all provisions of this Contract, verify facility compliance with Chapter 376, F.S., and Chapters 62-761 and 62-762, and be knowledgeable of the differences between the state and federal environmental statutes and rules applicable to underground storage tanks.
18. The Contractor shall require that qualified individuals perform field inspections and that they receive training on Chapters 62-761 and 62-762, and Chapter 376, F.S.
19. The Contractor shall provide a sufficient number of qualified staff to satisfactorily complete all the responsibilities included in this Contract. All individuals hired after the effective date of this Contract shall possess qualifications equivalent to Department position levels as specified in this Contract.

20. The Contractor shall determine the accurate latitude and longitude coordinates for each regulated facility inspected using Department-approved procedures and ensure the proper entry of this data into the Department inspection database.
21. The Contractor shall review closure reports filed by facility owners, operators, or authorized representatives to ensure that the Department's "Instructions for Conducting Sampling During Aboveground Storage Tank Closure" (Guidance Document C1) and "Instructions for Conducting Sampling During Underground Storage Tank Closure" (Guidance Document C2) have been followed. In cases where these requirements have not been met, the Contractor shall initiate Level 1 Compliance Assistance actions to compel compliance. In cases where these requirements have been met and none the of Department's cleanup target levels have been exceeded, the Contractor shall issue a Closure Report Review Letter for the system or component described in the Closure Report indicating the Closure Report meets the requirements of Chapter 62-761 and/or 62-762, F.A.C. In cases where cleanup target levels have been exceeded and it has been determined to be a new discharge, the Contractor shall prepare and send a Site Assessment Report request letter to the facility owner and operator, if appropriate. In addition, the Contractor shall provide notification to the Department Task Manager within thirty (30) days of the determination of a new discharge at a facility.
22. The Contractor shall prepare and send a Site Assessment Report request letter to the facility owner and operator, if appropriate, in cases where a new discharge has been discovered related to a regulated storage tank system, but unrelated to a closure as discussed in paragraph 13., above. In addition, the Contractor shall provide within thirty (30) days of the determination of a new discharge at a facility.
23. The Contractor shall maintain its paper files on regulated facilities that were composed prior to the FIRST database implementation, as well as documentation from the facility that may not be available in FIRST, such as closure reports. In the event a case referral to the Department District Office for further enforcement is necessary, a copy of any documents pertinent to the case that are not available in FIRST shall be submitted to the Department District Office in accordance with the "Guidelines for Case Referrals" (Guidance Document G).
24. Facility files must be kept until the site has been determined closed. Once the facility has been closed for five (5) years, the records may be sent to the Department Contract Manager in Tallahassee for preservation, unless the Contractor is subject to more stringent local record retention requirements. Copies can be maintained by the Contractor at the Contractor's expense. If, for any reason, the Department's contractual arrangement with the Contractor to perform the inspection program (through this Contract or any future contracts) ceases, the Contractor shall return all original facility files to the Department Contract Manager in Tallahassee within 30 calendar days of Contract expiration or termination.
25. The Contractor shall provide attendance of at least one program staff member at scheduled meetings, conferences, and teleconferences. The Department Task Manager may authorize attendance at a location other than the District Office. The Contractor shall provide attendance of additional staff members as requested by the Department.
26. The Contractor shall ensure that all field personnel receive the health and safety training required to meet OSHA standards (an initial 24 or 40-hour course within 6 months of employment under this Contract, followed by an annual 8-hour refresher course).
27. The Contractor shall supervise the Local Compliance Program with an individual at a minimum equivalent to the Department's Environmental Specialist III personnel category.

28. The Contractor shall provide copies of applicable rules, inspection forms, and other program/public assistance information to the public and regulated interests. However, this provision does not authorize photocopying of reference documents in violation of copyright law.
29. The Contractor shall maintain financial books, records, and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles consistently applied. All books, records, and documents pertinent to performance under this Contract shall be maintained for the entire term of this Contract and for five years following the expiration or termination of this Contract. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the entire term of this Contract and for five years following the expiration or termination of this Contract. A penalty of 8.3% of the current Task Assignment amount will be assessed for each year that shows insufficient record keeping.
30. The Contractor shall not allocate funding to non-program activities outside the scope of this Contract or any Task Assignment. Sections 376.3071 and 376.11, F.S., prohibit the use of IPTF and Florida Coastal Protection Trust Fund (FCPTF) moneys for purposes other than those specified in these sections.
31. Access to Department databases shall be made by using an Internet connection. Therefore, the Contractor is responsible for subscribing to and paying for all charges related to use of the services of a reputable Internet service provider. The Contractor must have a dedicated Internet line for FIRST.
32. The Contractor shall provide a written response within forty-five (45) days to the Program Review findings conducted in accordance with paragraph 38, below, and at a minimum, provide details on any corrective actions that will be implemented.
33. The Contractor shall submit a satisfactory Corrective Action Plan to the Department Task Manager upon notification of a score below seventy-five (75) on the Program Review within fourteen (14) calendar days of notification of the score. Because a score below seventy-five (75) reflects an unacceptable level of performance, if the Contractor receives a score below seventy-five (75) may result in contract termination.
34. The Contractor is responsible for the professional quality, technical accuracy, and coordination of all reports and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its reports and other services.

DEPARTMENT RESPONSIBILITIES

35. The Department shall serve in an advisory capacity to the Contractor. The Department shall make legal interpretations of Department rules, which shall be binding with respect to the Contractor's ordinances to the extent that those ordinances adopt the provisions of Chapters 62-761 and 62-762, F.A.C., as required by this Contract.
36. The Department shall review completed inspection reports when and as deemed necessary.
37. The Department shall provide program and regulatory guidance for the Contractor. The Department shall provide training in new technology and program management changes as necessary.
38. The Department shall conduct enforcement activities for violations of Chapters 62-761 and 62-762, F.A.C., when case referrals are properly made and forwarded to the District Office in accordance with the "Guidelines for Case Referrals" (Guidance Document G).
39. The Department shall provide information to the Contractor about Department registered storage tank system equipment and alternate procedures (waivers, variances, or registrations).

40. At least once annually, the Department shall perform a Program Review using the "Compliance Verification Program Local Program Review Form" (Guidance Document D), and provide a copy of the Program Review findings to the Contractor upon completion of the Program Review. The Department may conduct inspections, including accompanied inspections and follow-up inspections, at any reasonable time. In addition, the Department may also conduct facility file reviews through FIRST at any time. The Department Task Manager may perform additional program reviews, as deemed necessary, to insure the required performance of the Contractor. The Department Task Manager may forgo a Program Review for the next Task Assignment for a Contractor that receives a score of 95 or greater on the Program Review during the current Task Assignment.

PAYMENTS

41. The Contractor shall submit invoices on a monthly basis. Each invoice shall be submitted using the "Contractual Services Invoice" (Guidance Document E). Each invoice is due no later than the 15th day of the month following the month of services. The invoice shall be submitted electronically to the Department Contract Manager at STR_Invoices@dep.state.fl.us and copied to the Department Task Manager. Reimbursement requests for the purchase of non-expendable equipment costing \$1,000 or more must include copies of invoices or receipts to document the charges.

REPORTS AND DELIVERABLES

42. Prior to the submittal of each month's invoice to the Department Contract Manager, the Contractor shall complete and submit electronically the "Payment Calculation Sheet" (Guidance Document H) for the month to the Department Task Manager no later than the 10th day of the month following the month of services. The Department Task Manager shall review the monthly Payment Calculation Sheet for accuracy and completeness and shall return the approved Payment Calculation Sheet to the Contractor for submittal with the monthly invoice to the Department Contract Manager in Tallahassee, Florida for processing. If the Contractor fails to perform as directed by the terms of this Contract, the Department shall return the unpaid invoice to the Contractor documenting the areas in which the Contractor has failed to meet its contractual obligations.

MANAGEMENT

45. The Department Contract Manager is Roger Ruiz, Phone (850) 245-8854. The Contractor's Contract Manager is Douglas Divers, Phone (321) 633-2017, Ext. 23. Each Task Assignment will identify the Department Task Manager and the Contractor's Task Manager. All matters relating to a specific Task Assignment shall be directed to the Department Task Manager for appropriate action or disposition. All matters relating to this Contract shall be directed to the Department Contract Manager.

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Attachment C

Florida Department of Environmental Protection Task Assignment Notification Form for BREVARD COUNTY

Contract No. GC916 Task No. xx Amendment No. Date xxx

Performance Period: Effective the date of execution of this Task Assignment or July 1, 2017, whichever is later, and shall remain in effect until June 30, 2018.

Description: (Additional Pages May Be Utilized)

The Contractor shall complete the following services in accordance with the requirements in DEP Contract No. GC916 and the guidance documents attached to this Task Assignment

- Conduct routine compliance inspections at the xx facilities storage tank systems within Brevard County, identified in Exhibit #1, by May 31, 2xxx.
- Perform all re-inspections per Guidance Document A to confirm compliance within Brevard County. Comply with the **Revised Invoice Procedure** (Page 2)
- Utilize the new **Contractual Services Invoice Form** for all monthly invoices (Guidance Document E)
- Compensation will only occur for routine annual compliance inspections conducted at the facilities explicitly identified in the revised **Payment Calculation Sheet** (Guidance Document H)
- The Contractor must perform all Enforcement Actions in accordance with Guidance Document F (Level of Effort), as attached to this Task Assignment.

Order of Inspection and Substitutions of Facilities on Exhibit #1:

Contractor is to conduct routine inspection in order provided in Exhibit #1. Substitutions of facilities are authorized with sites listed on the substitution list on Exhibit #1. The Contractor wishing to substitute a facility shall email department at STR_Invoices@dep.state.fl.us stating the facility and reason for the substitution. The Department will notify via email authorizing the substitution. Copies of authorizations shall be retained by the Contractor for the remainder of the Contract.

Performance Criteria:

1. **Number of days to return to compliance for facilities receiving routine inspections**
2. **Percent of facilities returned to compliance for facilities receiving routine inspections**

FDEP will determine levels of performance based on routine inspections completed before May 1, 2xxx. This will allow for the sixty days return to compliance rate to be determined before July 1, 2xxx.

Payment schedule: Compensation will occur on a monthly basis, per the attached fee schedule. Invoices are due no later than the 15th day of the month proceeding work activity. The Contractor must submit a signed 'Contractual Services Invoice' noting the quantity and location of inspections.

Retainage reimbursement criteria for the amount retained per Paragraph 21 of the Contract:

- Half (50%) of the amount retained will be returned to Contractor having an average return to compliance in less than 45 days for facilities receiving routine inspections.
- Half (50%) of the amount retained will be returned to Contractor having an average return to compliance rate of 95% or higher for facilities receiving routine inspections.
- Forty percent (40%) of the amount retained will be returned to Contractor having an average return to compliance rate between 45 and 60 days for facilities receiving routine inspections.
- Forty percent (40%) of the amount retained will be returned to Contractor having an average return to compliance rate of between 90% and up to 95% for facilities receiving routine inspections.
- Thirty percent (30%) of the amount retained will be returned to Contractor having an average return to compliance rate between 61 days and 75 days for facilities receiving routine inspections.
- Thirty percent (30%) of the amount retained will be returned to Contractor having an average return to compliance rate of between 85% and up to 90% for facilities receiving routine inspections.
- Twenty percent (20%) of the amount retained will be returned to Contractor having an average return to compliance rate between 76 days and 90 days for facilities receiving routine inspections.
- Twenty percent (20%) of the amount retained will be returned to Contractor having an average return to compliance rate of between 80% and up to 85% for facilities receiving routine inspections.
- NO retainage will be returned to Contractor having either: more than ninety (90) days as average time to return to compliance for facilities receiving routine inspections; or having an average of less than 80% of facilities receiving routine inspections returned to compliance.

Invoice Procedure

Review of Inspections: The Payment Calculation Sheet shall be submitted by the Contractor to the appropriate DEP District Office. The District will review in Florida Inspection Reporting of Storage Tanks (FIRST) each variable inspection listed on the Payment Calculation Sheet to ensure that the inspection is correctly invoiced. The District will ensure that each routine compliance inspection on the Payment Calculation Sheet is also listed on the task assignment facilities list. Upon completion of the review, the District shall report via email to the Permitting and Compliance Assistance Program's Contract Manager and the Contractor that the review of the inspections has been completed and of any known contractual obligations that have not been met.

Invoice Submission: All invoices with verified and approved Payment Calculation Sheet by the appropriate DEP District Office will be directly submitted by the Contractor to the Permitting and Compliance Assistance Program's Contract Manager by the 15th of each month. Submission of invoice shall be via email to: STR_Invoices@dep.state.fl.us. **The email shall consist of a single PDF package.** The order of documents in the complete PDF package shall be as follows:

- 1) Contractual Services Invoice
- 2) Verified Payment Calculation Sheet (please make sure the month of services rendered appears below the "Invoice Period")
- 3) FIRST Report (Compliance and Activity by Date Range)
- 4) Tracking Form (Monthly percentage of Routine Inspections Completed)

The Contractor acknowledges receipt of the following guidance documents:

Guidance Document A	Storage Tank System Program Violation List
Guidance Document B	Florida Inspection Reporting for Storage Tanks (FIRST) User Requirements. Please visit DEP OCULUS website to download this document; click the "PUBLIC OCULUS LOGIN": https://depedms.dep.state.fl.us/Oculus/servlet/shell?command=getEntity&[guid=11.3384454.11]&[profile=DWM]
Guidance Document C1	Instructions for Conducting Sampling During Aboveground Storage Tank Closure
Guidance Document C2	Instructions for Conducting Sampling During Underground Storage Tank Closure
Guidance Document D1	Compliance Verification Program Local Program Review Form
Guidance Document D2	Contractual Review Form
Guidance Document E	Contractual Services Invoice
Guidance Document F	Level of Effort Guidance
Guidance Document G	Guidelines for Case Referrals
Guidance Document H	Contractual Service Payment Calculation
Guidance Document I	DEP Directive 923 Settlement Guidelines for Civil and Administrative Penalties



Florida Department of Environmental Protection

TASK ASSIGNMENT FORM

Required Signatures: Adobe Signature

FDEP Contract No;	Task Assignment No;	Date:	DEP Task Manager:
Project:			
Contractor Name:			
Contractor Representative:	Phone:	Email:	
FDEP Contract Manager:	Phone:	Email:	
Task Description:			
Deliverables:			
Performance Measures:			
Financial Consequences:			



Florida Department of Environmental Protection

TASK ASSIGNMENT CHANGE ORDER FORM

Change in Funding Information

Org. Code	E.O.	Object Code	Budget Entity	Special Category	Grant #	Year	Amount

CONTRACTOR

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Contract Manager Date

Contract Manager Date

APPROVED:

Budget Representative Date

Contractual Authority Date

cc: Procurement Section (MS93)
Bureau of Finance & Accounting (MS78) - 2 copies

**ATTACHMENT E
CONTRACTOR AFFIDAVIT / RELEASE OF CLAIMS FORM**

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

The undersigned certifies as follows:

1. I, _____ am the _____ of _____ with the authority to _____ with the authority to _____
(name of person appearing) (title of person appearing)
(name of Contractor)
make this statement on behalf;
2. _____ ("the Contractor") entered into an Agreement with the Department to perform certain work under Task Assignment No. _____
(name of company or person)
3. Contractor has completed the work in accordance with the aforementioned Work Assignment, including all attachments. Thereto.
4. All subcontractors have been paid in full.
5. Upon receipt by Contractor from Department of final payment under the aforementioned Work Assignment, Contractor releases Department from any and all claims of Contractor and any of its subcontractors and vendors that may arise under, or by virtue of, the Task Assignment, except those claims that may be specifically exempt and set forth under the terms of this Contract. Exemptions claimed must be attached to this affidavit and reference the Task Assignment number. Any exemptions not attached are waived.

(signature of authorized Contractor representative)

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

State of _____ County of _____

Sworn to and subscribed before me by _____ this _____ day of _____, 20____.

- Personally known
- Produced Identification. Type of ID: _____

(Notary's Signature) My Commission Expires: _____

Notary Public, State of _____ Commission Number (if applicable) _____

(Approved Template 05/10/16)

ATTACHMENT F, PUBLIC RECORDS REQUIREMENTS

A. Public Records Access Requirements.

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

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

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

- (1) Keep and maintain Public Records required by the Department to perform the service.
- (2) Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (3) A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- (4) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- (5) Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.
- (6) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board:

1. Contractor: Florida Department of Environmental Protection (FDEP)	
2. Fund/Account #: 0004 / 215230	3. Division Name: Natural Resources Mgt. Dept.
4. Contract Description: FDEP Amended & Restated Pollutant Storage System Compliance Verification Program Contract	
5. Contract Monitor: Douglas Divers	6. Mail Stop #: 82
7. DEPT./Office Director: Virginia Barker, Director	8. Class Code:
ACTION DATE: 05/22/2018	ACTION REQUIREMENT: Review / Approve

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>yes</u>	<u>no</u>		
User Agency	X	_____	PDD	04/24/2018
Risk Management	✓	_____	ML	5-07-2018
County Attorney	_____	_____	_____	_____

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the Contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.*

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	<u>yes</u>	<u>no</u>		
User Agency	X	_____	PDD	04/24/2018
Risk Management	_____	_____	_____	_____
County Attorney	_____	_____	CW	5/8/18
	_____	_____	_____	_____

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