

DEP CONTRACT NO. «gc_num»
AMENDMENT NO. «AMEND_NUM»

THIS CONTRACT as entered into on the «orig_contract_date», and amended and restated on the 30th day of September, 2015, between the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** (hereinafter referred to as the “Department”) and «ATC_NAME» (hereinafter referred to as the “Contractor”) is hereby amended as follows:

- Paragraph 13 is hereby deleted in its entirety and replaced with the following:

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

The address for all allowed or required Notices shall be as follows:

<u>Contractor</u>	<u>Department</u>
«atc_name»	Department of Environmental Protection
«atc_addr»	Petroleum Restoration Program
«atc_city», «atc_state» «atc_zip»	2600 Blair Stone Road, MS#4525
Attn: «atc_contact_name»	Tallahassee, Florida 32399-2400
Email: «atc_contact_email»	Use PRP.Contracts@dep.state.fl.us for Electronic Notices

- Paragraph 25 is hereby deleted in its entirety and replaced with the following:

Public Records.

- A. Contractor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Restated Contract are public records under Florida law, as defined in Section 119.011(12), F.S. Contractor shall keep and maintain public records required by the Department to perform services under this Restated Contract.
- B. This Restated Contract may be unilaterally canceled by the Department for refusal by the Contractor to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Contractor in conjunction with this Restated Contract and subject to disclosure under Chapter 119, F.S., and section 24(a), Article I, Florida Constitution.
- C. If Contractor meets the definition of “Contractor” found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:
 - 1. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Restated Contract for services must be made directly to the Department. If the Department does not possess the requested records, the Department shall immediately notify the Contractor of the request, and the Contractor must provide the records to the Department or allow the records to be inspected or copied within a reasonable time. If Contractor fails to provide the public records to the Department within a reasonable time, the Contractor may be subject to penalties under s. 119.10, F.S.

2. Upon request, and the Department's custodian of public records, Contractor shall provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Contractor shall identify and ensure that all 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 Restated Contract term and following completion of the Restated Contract if the Contractor does not transfer the records to the Department.
4. Upon Completion of the Restated Contract, Contractor shall transfer, at no cost to the Department, all public records in possession of Contractor or keep and maintain public records required by the Department to perform the services under this Restated Contract. If the Contractor transfers all public records to the Department upon completion of the Restated Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Restated Contract, the Contractor shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to Department, upon request from the Department's custodian of public records, in a format that is accessible by and compatible with the information technology systems of Department.

D. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS by telephone at (850) 245-2118, by email at publicservices@dep.state.fl.us, or at the mailing address below.

**Department of Environmental Protection
Office of the Ombudsman & Public Services
Attn: Public Records Request
3900 Commonwealth Blvd, MS 49
Tallahassee, Florida 32399**

- Paragraph 33 is hereby deleted in its entirety and replaced with the following:

Record Keeping and Audit.

- A. Contractor shall maintain books, records and documents directly pertinent to performance under this Restated 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 Restated Contract and for five (5) years following Restated 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 Restated Contract, if any, impose this requirement, in writing, on its subcontractors.

- Paragraph 36 is hereby deleted in its entirety and replaced with the following:

Tax Exemption. Contractor recognizes that 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 Restated 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. Any exceptions to this paragraph shall be explicitly noted by Department on a TA, TACO or PO.

- Paragraph 37 is hereby deleted in its entirety and replaced with the following:

Disqualification.

- A. Contractor shall maintain its qualified contractor status with Department during the term of this Restated Contract. In the event that Contractor's qualification status lapses, Contractor shall immediately notify Department and undertake steps to reinstate its qualified status prior to continuation of any executed Work Assignment or acceptance of any new Work Assignment. Failure to notify Department shall result in the suspension of all Work Assignments and/or termination of this Restated Contract.
- B. 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 Restated Contract. Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Restated Contract. Any exceptions to this paragraph shall be explicitly noted by Department on a TA, TACO or PO.
- C. Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify employment eligibility of all employees used by the Contractor under this Restated Contract, pursuant to State of Florida Executive Order No.: 11-116. Also, the Contractor shall include in related subcontracts, if authorized under this Restated Contract, a requirement that subcontractors performing work or providing services pursuant to this Restated Contract utilize the E-verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work.
- D. If the total Source Contract and Restated 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 Restated Contract. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Restated 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 Source Contract or Restated Contract. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then

they shall become inoperative.

- Paragraph 46 is hereby deleted in its entirety and replaced with the following:

MyFloridaMarketPlace Transaction Fee.

- A. The State of Florida through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to Section 287.057(22)(c), F.S. (2015), all payments shall be assessed a Transaction Fee which the Contractor shall pay the State unless exempt pursuant to Rule 60A-1.032, F.A.C.
- B. For Payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A- 1.031(2), Florida Administrative Code (F.A.C.). By submission of these reports and corresponding payments, the Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.
- C. Contractor shall receive a credit for any Transaction Fee paid by the vendor for the purchase of any item(s) if such item(s) is/are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected, returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of this Restated Contract.
- D. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS THAT ARE DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- E. Pursuant to 8.E above, Department will include a separate Schedule of Pay Item, per task, to reimburse the Contractor for the MFMP transaction fee on Cost Reimbursable items identified for a project. This pay item will only be added for those projects issued on or after the Effective Date of the Restated Contract, September 30, 2015.

- Paragraph 52 is hereby deleted in its entirety and replaced with the following:

Execution in Counterparts. This Restated 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.

This Amendment shall include an update to ATTACHMENT A (V2.0), SCOPE OF SERVICES, APPENDIX I, Section A. LAWS AND REGULATORY SPECIFICATIONS, DEP GUIDANCE DOCUMENTS AND FORMS Table, as follows:

- Item No. 44 shall be deleted.

DEP GUIDANCE DOCUMENTS AND FORMS						
	Title	References*	Site Assess.	Remedial Options and Design	RA Impl.	Site Closure
44.	Investigations Near Petroleum Storage Systems (9/25/00)	None	X	X	X	

- Item No. 44.a and Item No. 44.b shall be added.

44.a	Restatement of Memo dated September 25, 2000 Amending Guidance for Amended & Restated Agency Term Contracts and Protocol for Contractor Damage to Petroleum Storage Systems and Utilities, Effective Date: December 16, 2016	None	X	X	X	
44.b	Performance Standards for State-Funded Investigations Near Petroleum Storage Systems and Utilities, December 16, 2016	62-761.200(63), FAC 62-761.450(2) and (3), FAC, 62-761.900(6), FAC, 62-761.900(1), FAC, 556, FS, 556.105, FS	X	X	X	X

All other terms and conditions of the Restated Contract shall remain unchanged.

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

«ATC_NAME»

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
ATC Contract Manager

By: _____
Secretary or designee

Date: _____

Date: _____

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