

**CONTRACT NO. ES002**  
**BETWEEN**  
**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**AND**  
**WATERFRONT PROPERTY SERVICES, LLC, D/B/A GATOR DREDGING**

THIS CONTRACT is entered into between the Department of Environmental Protection (Department), an agency of the State of Florida, and Waterfront Property Services, LLC, d/b/a Gator Dredging, 13630 50<sup>th</sup> Way North, Clearwater, Florida, 33760, (Contractor), a limited liability corporation, to provide Harmful Algal Bloom Management.

NOW, THEREFORE, the parties agree as follows:

**SERVICES AND PERFORMANCE**

**1. SERVICES.** Department does hereby retain, and Contractor agrees to provide Harmful Algal Bloom Management (services), in accordance with **Attachment A**, Statement of Work (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") (copies attached hereto and made a part hereof as Attachment C and D respectively).

B. Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until the Contract, and any necessary Amendments or Change Orders, have been fully executed by both Department and Contractor. Contractor, or its subcontractors if authorized under this Contract, 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 upon execution by both parties and shall remain in effect for a period of three (3) 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 fixed price/fee schedule basis up to a maximum of amount specified in each TA or TACO for the completion of Work as specified in each TA or TACO.

B. Contractor shall not be compensated for services performed prior to execution of this Contract, nor for services that exceed the funding amount specified herein or in any amendment to this Contract.

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 the Scope.

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

C. Department must approve the final deliverable(s) before the Contractor may submit 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  
Office of Ecosystem Restoration  
Attn: Katie Wallace  
Email address: [Katherine.m.wallace@floridadep.gov](mailto:Katherine.m.wallace@floridadep.gov)

E. Contractor shall submit invoices to the Department within thirty (30) days after the date of the Department's written approval of each interim deliverable or the final deliverable specified in the Scope. Contractor's failure to submit invoices within this timeframe may result in **forfeiture** of retainage, if applicable, suspension or termination of remaining work, or the Contractor's **forfeiture** of any unpaid balance for such deliverables.

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 fixed cost 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. PROMPT PAYMENT.**

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.

**10. 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 G**, - 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.

**11. 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**

**12. 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.

**13. 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:

<u>Contractor</u>	<u>Department</u>
Waterfront Property Services, LLC, d/b/a Gator Dredging 13630 50 <sup>th</sup> Way North Clearwater, FL, 33760 Attn: William Coughlin, President/CEO Phone Number: (727) 527-1300 Email: <a href="mailto:bill@gatordredging.com">bill@gatordredging.com</a>	Department of Environmental Protection Office of Ecosystem Restoration 3900 Commonwealth Blvd, MS 24 Tallahassee, Florida 32399 Attn: Katie Wallace Phone Number: (850) 245-3183 Email: <a href="mailto:Katherine.m.wallace@floridadep.gov">Katherine.m.wallace@floridadep.gov</a>

**14. 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 Amendment to this Contract. 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**

**15. 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.

#### **16. 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, upon 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, or assign to another vendor.

**17. 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 estop 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.

**18. 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 \$ *insert amount*.
- ☐ 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.

**19. 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 ten percent (10%) per day for each day the deliverable is late as indicated in the scope of work, 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 ten percent (10%) for each day 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.

## **LIABILITY**

### **20. INSURANCE.**

A. Required Coverage. At all times during the Contract the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Contractor may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Contract may be required elsewhere in this Contract, however the minimum insurance requirements applicable to this Contract are:

- i. Commercial General Liability Insurance. The Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$200,000 each individual's claim and \$300,000 each occurrence.
- ii. Workers' Compensation and Employer's Liability Coverage. The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Contract.
- iii. Commercial Automobile Insurance. If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:
  - \$300,000 Automobile Liability Combined Single Limit for Company-Owned Vehicles, if applicable
  - \$300,000 Hired and Non-owned Automobile Liability Coverage
- iv. Other Insurance. Additional insurance may be required by federal law, where applicable, if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbor Worker's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhwc/liscontac.htm>) or to the parties' insurance carrier.

B. Insurance Requirements for Sub-Contractors. 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.

C. Exceptions to Additional Insured Requirements. If the Contractor's insurance is provided through an insurance trust, the Contractor shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Contract requires them to be added as an additional insured. Further, notwithstanding the requirements above, if Contractor is self-insured, then the Department of Environmental Protection, its employees, and officers do not need to be listed as additional insureds.

D. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor providing such insurance.

E. Proof of Insurance. Upon execution of this Contract, the Contractor shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage **prior to** performance of any work under this Contract. Upon receipt of written request from the Department, the Contractor shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.

F. Failure to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, the Contractor shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) calendar days after the cancellation of coverage.

## **21. INDEMNIFICATION.**

A. Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors, if authorized under this Contract, and shall fully indemnify, defend, and hold harmless the State of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, and their officers, agents, and employees, from suits, actions, damages, and 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 the Contractor, its agents, employees, partners, or subcontractors, if authorized under this Contract, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund.

B. Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to the Department's misuse or modification of the Contractor's products or the Department's operation or use of the Contractor's products in a manner not contemplated by this Contract. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Department the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Department the right to continue using the product, the Contractor shall remove the product and refund the Department the amounts paid in excess of a reasonable rental for past use. Department shall not be liable for any royalties.

C. The Contractor's obligations under the preceding two (2) paragraphs with respect to any legal action are contingent upon the State or the Department giving Contractor 1) written notice of any action or threatened action, 2) the opportunity to take over and settle or defend any such action at the Contractor's sole expense, and 3) assistance in defending the action at the Contractor's sole expense.

### **THIRD PARTIES**

**22. 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.

**23. 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.

**24. 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**

#### **25. 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, if authorized under this Contract, 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, if authorized under this Contract, 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.

## **26. 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).

## **SPECIAL CONDITIONS**

**27. ADDITIONAL QUANTITIES.** For a period not exceeding the term of this contract, the Department reserves the right to acquire additional quantities on an as-needed basis, depending on the availability of funds, at the same unit price(s), terms and conditions.

*NOTE: This section supersedes Section 6.00, General Contract Conditions (PUR-1000), Paragraph 5, Additional Quantities.*

**28. ADDITIONS / DELETIONS.** During the term of the contract resulting from this bid, the Department shall have the right to make product changes that result in additions, deletions, or revisions to awarded items / services. Specifications and prices of items added or revised must be agreed upon in writing by both the Department and Contractor. Prices of added or revised items shall be mutually agreed upon by the Department and Contractor.

**29. DISCLOSURE OF LITIGATION.** The contractor shall promptly notify the Department of any criminal litigation, investigations or proceedings which arise during the term involving the contractor, or, to the extent the contractor is aware, any of the contractor's subcontractors or any of the foregoing entities' then-current officers or directors. In addition, the contractor shall promptly notify the Department of any civil litigation, arbitration or proceeding which arises during the term of the contract and extensions thereto, to which the contractor (or, to the extent the contractor is aware, any Subcontractor hereunder) is a party, and which involves:

A claim or written allegation of fraud against the contractor or, to the extent the contractor is aware, any subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. All notices under this section must be provided to the Department within thirty (30) business days following the date on

which the contractor first becomes aware of any such litigation, investigation, arbitration or other proceeding (collectively, a Proceeding). Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such.

## **GENERAL CONDITIONS**

**30. 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.

**31. 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.

**32. 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.

### **33. 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.

**34. 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.

**35. 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.

**36. 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.

**37. 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.

**38. 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.

**39. 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.

#### **40. 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. Contractor further acknowledges and agrees that it had the opportunity and obligation, prior to submission

of its Response, to review the terms and conditions of this Contract and to bring to the attention of the Department any conflicts or ambiguities contained therein.

**41. 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.

**42. ELIGIBLE USERS.**

A. Other State of Florida Governmental entities may purchase from this Contract, provided such use of the Contract has been determined to be cost effective by the Entity and in the best interest of the State.

B. The Contractor has the option of selling the commodities or services described under this Contract to other State of Florida governmental entities at the Contractor's discretion.

C. Eligible users of this Contract include other State of Florida Agencies (including members of the State University System and Community College System), Water Management Districts, Counties, Local County Boards of Public Institution, Municipalities, and other local public agencies or authorities.

D. The general terms and conditions of this Contract shall apply to the services procured by other State of Florida governmental entities referencing this Contract.

E. Funding mechanisms/work assignments must be executed in advance of work performed for another State of Florida governmental entity. The governmental entity shall utilize appropriate funding mechanisms (purchase orders, etc.) to authorize performance by the Contractor.

F. All work performed under a funding mechanism executed by another State of Florida governmental entity shall be the responsibility of the governmental entity for payment. The Department shall not be responsible for payment of any services performed under this section of the Contract.

G. This Contract shall only be used by other governmental entities in accordance with the Eligible Users' Scope of Services Section, in Attachment A Statement of Work.

H. Contract/Project Managers shall be identified for each work assignment executed between the Contractor and another governmental entity. The Department's Contract/Project Manager shall not be responsible for any work performed under this section of the Contract.

**43. 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, Florida Administrative Code (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 Contractor. 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 Contractor 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 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.

#### **44. 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, if authorized under this Contract, 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.

**45. 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.

**46. 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.

**47. 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;
4. Documents, agreements and exhibits incorporated herein by reference;
5. Solicitation, including all attachments, addenda, and questions and answers; and
6. Contractor's Response to the Solicitation.

**48. 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.

**49. 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 28<sup>th</sup> Street, North  
St. Petersburg, Florida 33716-1826  
Toll Free: 1-800-643-8459  
Website: <http://www.pride-enterprises.org/>

**50. 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, if authorized under this Contract, 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.

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

**52. 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, if authorized under this Contract, 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, if authorized under this Contract.

**53. 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.

**54. 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

**55. SCRUTINIZED COMPANIES.**

A. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract.

B. If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option 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 the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.

C. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

**56. 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.

**57. 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.

**58. 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.

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

Waterfront Property Services, LLC, d/b/a Gator  
Dredging

By: William J. Coughlin, III  
William J. Coughlin, III, President

Date: April 10, 2019

Florida Department of Environmental Protection

By: Daniel A. Smith

Date: 4/10/19

FEID No. 20-3403593

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

Specify Type /

Letter	Description
Attachment A	Statement of Work (2 pages)
Attachment B	Rate Schedule (6 pages)
Attachment C	Task Assignment Notification Form (1 page)
Attachment D	Task Assignment Change Order Form (1 page)
Attachment E	Contractor Affidavit / Release of Claim Form (1 page)
Attachment F	Public Records Requirement (1 page)
Attachment G	Liquidated Damages Assessment Form (1 page)
Attachment H	General Contract Conditions (PUR 1000)

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**ATTACHMENT A  
STATEMENT OF WORK**

**1.01 Scope of Services.** All services shall be performed in accordance with the requirements set forth in this section. The timeframes outlined in the Scope may be modified at the sole discretion of the Department if required for a particular Task Order. Any changes to the timeframes outlined in the scope will be agreed to in writing in the Task Order. The Department may request any or all the services outlined in the Scope of Services from the Contractor on an as needed basis.

Once a contract is awarded, Contractor selection for each specific incident will be determined based on the information provided in the technical submittals, cost estimates, and specific characteristics of the incident in the sole discretion of the Department. No minimum amount of work is guaranteed under the contract(s) resulting from this Solicitation.

- A. **Notification of HAB.** Contractors will be notified via email of a HAB. Contractors will have four (4) business hours to respond if they are interested in the task. The Department will provide details about the HAB to interested Contractors and the Contractors will have one (1) business day to respond with a quote for the cleanup. The Department will notify the selected Contractor within one (1) business day.
- B. **Response Locations.** Due to the unpredictable nature of HAB development, the selected Contractor(s) will be required to arrive and initiate cleanup at locations throughout the State of Florida within 48 hours of assignment by the Department. The Contractor will be responsible for securing access with the landowners. The Department is not responsible for denied access.
- C. **Time to Complete.** The selected Contractor(s) would be required to complete services within seven (7) calendar days of arrival to locations of HAB development. If cleanup cannot be completed within seven (7) calendar days the respondent must provide an estimate of proposed cleanup time to the Department by day five (5) of cleanup efforts.
- D. **Infrastructure Needs.** The selected Contractor(s) is responsible for meeting any infrastructure needs to complete the services. This includes insuring the availability of road/boat ramp/waterbody access, access to electricity or water, appropriately sized and situated area for performing services, and any other infrastructure required (i.e. permits) by the selected Contractor(s).
- E. **Disposal.** The selected Contractor(s) is responsible for the proper disposal of all materials associated with the services provided including, but not limited to, containment devices, algal mats and other material removed by the services, by-products of the services provided, as well as any materials associated with the services provided.
- F. **Analytical Services.** The selected Contractor(s) is responsible for any water quality analysis required to monitor the dosing of any additives or effectiveness of treatments, while the cleanup is ongoing, as well as any water quality analyses that the Department requires due to the nature of the services provided. Final chemical evaluation of the waterbody for cyanotoxins and other parameters of the Department's choosing, once the Contractor has indicated their treatment is complete, will be performed by the Department, at the Department's expense.

**1.02 Contractor Responsibilities.**

- A. The Contractor shall perform services to provide the following deliverables in accordance with the chart below:

Deliverable(s)	Task(s)	Performance Standards	Supporting Documentation	Financial Consequence(s)
1. Removal of HAB	a. Mobilize within 48 hours after receipt of Notice to Proceed	a. Arrive within prescribed time with correct personnel.	a. Daily Log	a. Reduction of invoice by 10% for every day late.
	b. Cleanup cyanobacteria mat using approved methods	b. DEP Lab results confirm cyanotoxin level at one (1) microgram per liter within 7	b. Photos and daily log	b. Reduction of invoice by 10% for every day late.

		days or as otherwise specified in the Task Order.		
	c. Email Daily Log of the previous day's site activities, list of equipment operating on-site, personnel on-site, estimated percentage complete, a description of daily weather conditions, daily photographs of algae impacted area, and planned activities for the following day.	c. Delivered on time and accurate.	c. Daily log	c. Reduction of invoice by 10% for every day late.
2. Photos of the cleanup site location at completion	Provide photos of cleanup site	Photos show no visible cyanobacteria mat.	Photos	No payment until receipt of the photos

- B. The Contractor shall contact the Department's Project Manager via email and telephone stating the cleanup is complete.
- C. Once the Department's sampling confirms that cleanup is complete, the Contractor will submit an invoice to the Department's Administrative Contract Manager within 30 business days upon receipt of the Letter of Cleanup Certification from the Department's Project Manager. The Contractor shall also include a copy of the Letter of Cleanup Certification, timesheets, disposal cost (tip fee) receipts, and equipment rental receipts with the invoice.

### **1.03 Department Responsibilities.**

- A. The Department (DEP Site Representative) will access the location of the potential HAB;
- B. The Department (Project Manager) will confirm the HAB;
- C. The Department (Project Manager) will issue a Notice to Proceed to the Contractor;
  - 1. After the Contractor notifies the Department that the cleanup is complete, the Department's Project Manager will contact the DEP Site Representative. The DEP Site Representative will arrive to the cleanup location within two (2) business days of the Contractor's notice of completion;
  - 2. The Department (DEP Site Representative) will sample the water where the HAB occurred:
    - (a) On the sample(s) confirm the cleanup is complete, the Department's Project Manager will provide a Letter of Cleanup Certification to the Contractor within five (5) business days.

### **1.04 Eligible Users' Scope of Services.**

Eligible users may purchase services from the Contract at the rates provided by the Contractors, however, they shall develop their own scopes and outline their own standards and approval processes for their individual task orders. The Department shall not be involved in any oversight, testing, or approvals, or have any other contractual obligations in the contracts between the eligible users and the Contractors awarded under this solicitation.

**ATTACHMENT B  
RATE SHEET(S)**

BEST AND FINAL OFFER RATE SHEET FOR NORTHWEST DISTRICT							
SERVICE	NOT TO EXCEED RATES						
	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3		Renewal Term Year 1	Renewal Term Year 2	Renewal Term Year 3
AIR QUALITY MONITORING (PER ANALYSIS)							
1. Ozone	\$56.10	\$56.10	\$56.10		\$61.20	\$61.20	\$61.20
RETURN WATER MONITORING (PER ANALYSIS)							
1. Cyantoxins	\$96.90	\$96.90	\$96.90		\$106.08	\$106.08	\$106.08
2. Residual Polymer	\$86.70	\$86.70	\$86.70		\$94.86	\$94.86	\$94.86
DISPOSAL COSTS (FIXED PRICE)							
1. Includes: Tipping Fees; equipment and employee billed below	\$18,003.00	\$18,003.00	\$18,003.00		\$19,743.12	\$19,743.12	\$19,743.12
PERSONNEL (LIST ALL EMPLOYEE DESCRIPTIONS) (HOURLY RATE)							
1. President	\$153.00	\$153.00	\$153.00		\$167.28	\$167.28	\$167.28
2. Operations Manager	\$86.70	\$86.70	\$86.70		\$94.86	\$94.86	\$94.86
3. Project Superintendent	\$76.50	\$76.50	\$76.50		\$83.64	\$83.64	\$83.64
4. Equipment Operator (Weedoo)	\$181.56	\$181.56	\$181.56		\$198.90	\$198.90	\$198.90
5. Crew Member	\$56.10	\$56.10	\$56.10		\$61.20	\$61.20	\$61.20
6. Truck Driver	\$61.20	\$61.20	\$61.20		\$67.32	\$67.32	\$67.32
EQUIPMENT (LIST DESCRIPTIONS) (DAILY RATE)							
1. Weedoo; includes: hoses, floats, turbidity curtain, tender vessel, fuel	\$5,100.00	\$5,100.00	\$5,100.00		\$5,592.66	\$5,592.66	\$5,592.66
2. Dewatering Tanks; includes: geotube, hoses, vibrators	\$816.00	\$816.00	\$816.00		\$894.54	\$894.54	\$894.54
3. Vacuum Pump; includes hoses, fuel	\$51.00	\$51.00	\$51.00		\$56.10	\$56.10	\$56.10
4. Chemical trailer; includes generator, fuel, chemicals	\$2,244.00	\$2,244.00	\$2,244.00		\$2,461.26	\$2,461.26	\$2,461.26
5. Roll-Off Truck; includes fuel	\$663.00	\$663.00	\$663.00		\$727.26	\$727.26	\$727.26
6. Storage Trailer; includes hand tools	\$255.00	\$255.00	\$255.00		\$279.48	\$279.48	\$279.48
MOBILIZATION / DEMOBILIZATION (FIXED PRICE)							
1. Mobilization	\$48,858.00	\$48,858.00	\$48,858.00		\$53,580.60	\$53,580.60	\$53,580.60
2. Demobilization	\$17,391.00	\$17,391.00	\$17,391.00		\$19,071.96	\$19,071.96	\$19,071.96

BEST AND FINAL OFFER RATE SHEET FOR NORTHEAST DISTRICT							
SERVICE	NOT TO EXCEED RATES						
	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3		Renewal Term Year 1	Renewal Term Year 2	Renewal Term Year 3
AIR QUALITY MONITORING (PER ANALYSIS)							
1. Ozone	\$55.00	\$55.00	\$55.00		\$60.00	\$60.00	\$60.00
RETURN WATER MONITORING (PER ANALYSIS)							
1. Cyantoxins	\$95.00	\$95.00	\$95.00		\$104.00	\$104.00	\$104.00
2. Residual Polymer	\$85.00	\$85.00	\$85.00		\$93.00	\$93.00	\$93.00
DISPOSAL COSTS (FIXED PRICE)							
1.	\$17,650.00	\$17,650.00	\$17,650.00		\$19,356.00	\$19,356.00	\$19,356.00
PERSONNEL (LIST ALL EMPLOYEE DESCRIPTIONS) (HOURLY RATE)							
1. President	\$150.00	\$150.00	\$150.00		\$164.00	\$164.00	\$164.00
2. Operations Manager	\$85.00	\$85.00	\$85.00		\$93.00	\$93.00	\$93.00
3. Project Superintendent	\$75.00	\$75.00	\$75.00		\$82.00	\$82.00	\$82.00
4. Equipment Operator (Weedoo)	\$178.00	\$178.00	\$178.00		\$195.00	\$195.00	\$195.00
5. Crew Member	\$55.00	\$55.00	\$55.00		\$60.00	\$60.00	\$60.00
6. Truck Driver	\$60.00	\$60.00	\$60.00		\$66.00	\$66.00	\$66.00
EQUIPMENT (LIST DESCRIPTIONS) (DAILY RATE)							
1. Weedoo; includes: hoses, floats, turbidity curtain, tender vessel, fuel	\$5,000.00	\$5,000.00	\$5,000.00		\$5,483.00	\$5,483.00	\$5,483.00
2. Dewatering Tanks; includes: geotube, hoses, vibrators	\$800.00	\$800.00	\$800.00		\$877.00	\$877.00	\$877.00
3. Vacuum Pump; includes hoses, fuel	\$50.00	\$50.00	\$50.00		\$55.00	\$55.00	\$55.00
4. Chemical trailer; includes generator, fuel, chemicals	\$2,200.00	\$2,200.00	\$2,200.00		\$2,413.00	\$2,413.00	\$2,413.00
5. Roll-Off Truck; includes fuel	\$650.00	\$650.00	\$650.00		\$713.00	\$713.00	\$713.00
6. Storage Trailer; includes hand tools	\$250.00	\$250.00	\$250.00		\$274.00	\$274.00	\$274.00
MOBILIZATION / DEMOBILIZATION (FIXED PRICE)							
1. Mobilization	\$47,900.00	\$47,900.00	\$47,900.00		\$52,530.00	\$52,530.00	\$52,530.00
2. Demobilization	\$17,050.00	\$17,050.00	\$17,050.00		\$18,698.00	\$18,698.00	\$18,698.00

BEST AND FINAL OFFER RATE SHEET FOR SOUTHWEST DISTRICT							
SERVICE	NOT TO EXCEED RATES						
	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3		Renewal Term Year 1	Renewal Term Year 2	Renewal Term Year 3
AIR QUALITY MONITORING (PER ANALYSIS)							
1. Ozone	\$53.90	\$53.90	\$53.90		\$58.80	\$58.80	\$60.00
RETURN WATER MONITORING (PER ANALYSIS)							
1. Cyantoxins	\$93.10	\$93.10	\$93.10		\$101.92	\$101.92	\$104.00
2. Residual Polymer	\$83.30	\$83.30	\$83.30		\$91.14	\$91.14	\$93.00
DISPOSAL COSTS (FIXED PRICE)							
1.	\$17,297.00	\$17,297.00	\$17,297.00		\$18,968.88	\$18,968.88	\$18,968.88
PERSONNEL (LIST ALL EMPLOYEE DESCRIPTIONS) (HOURLY RATE)							
1. President	\$147.00	\$147.00	\$147.00		\$160.72	\$160.72	\$160.72
2. Operations Manager	\$83.30	\$83.30	\$83.30		\$91.14	\$91.14	\$91.14
3. Project Superintendent	\$73.50	\$73.50	\$73.50		\$80.36	\$80.36	\$80.36
4. Equipment Operator (Weedoo)	\$174.44	\$174.44	\$174.44		\$191.10	\$191.10	\$191.10
5. Crew Member	\$53.90	\$53.90	\$53.90		\$58.80	\$58.80	\$58.80
6. Truck Driver	\$58.80	\$58.80	\$58.80		\$64.68	\$64.68	\$64.68
EQUIPMENT (LIST DESCRIPTIONS) (DAILY RATE)							
1. Weedoo; includes: hoses, floats, turbidity curtain, tender vessel, fuel	\$4,900.00	\$4,900.00	\$4,900.00		\$5,373.34	\$5,373.34	\$5,373.34
2. Dewatering Tanks; includes: geotube, hoses, vibrators	\$784.00	\$784.00	\$784.00		\$859.46	\$859.46	\$859.46
3. Vacuum Pump; includes hoses, fuel	\$49.00	\$49.00	\$49.00		\$53.90	\$53.90	\$53.90
4. Chemical trailer; includes generator, fuel, chemicals	\$2,156.00	\$2,156.00	\$2,156.00		\$2,364.74	\$2,364.74	\$2,364.74
5. Roll-Off Truck; includes fuel	\$637.00	\$637.00	\$637.00		\$698.74	\$698.74	\$698.74
6. Storage Trailer; includes hand tools	\$245.00	\$245.00	\$245.00		\$268.52	\$268.52	\$268.52
MOBILIZATION / DEMOBILIZATION (FIXED PRICE)							
1. Mobilization	\$46,942.00	\$46,942.00	\$46,942.00		\$51,479.40	\$51,479.40	\$51,479.40
2. Demobilization	\$16,709.00	\$16,709.00	\$16,709.00		\$18,324.04	\$18,324.04	\$18,324.04

BEST AND FINAL OFFER RATE SHEET FOR CENTRAL DISTRICT						
SERVICE	NOT TO EXCEED RATES					
	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3	Renewal Term Year 1	Renewal Term Year 2	Renewal Term Year 3
<b>AIR QUALITY MONITORING (PER ANALYSIS)</b>						
1. Ozone	\$53.90	\$53.90	\$53.90	\$58.80	\$58.80	\$60.00
<b>RETURN WATER MONITORING (PER ANALYSIS)</b>						
1. Cyantoxins	\$93.10	\$93.10	\$93.10	\$101.92	\$101.92	\$104.00
2. Residual Polymer	\$83.30	\$83.30	\$83.30	\$91.14	\$91.14	\$93.00
<b>DISPOSAL COSTS (FIXED PRICE)</b>						
1.	\$17,297.00	\$17,297.00	\$17,297.00	\$18,968.88	\$18,968.88	\$18,968.88
<b>PERSONNEL (LIST ALL EMPLOYEE DESCRIPTIONS) (HOURLY RATE)</b>						
1. President	\$147.00	\$147.00	\$147.00	\$160.72	\$160.72	\$160.72
2. Operations Manager	\$83.30	\$83.30	\$83.30	\$91.14	\$91.14	\$91.14
3. Project Superintendent	\$73.50	\$73.50	\$73.50	\$80.36	\$80.36	\$80.36
4. Equipment Operator (Weedoo)	\$174.44	\$174.44	\$174.44	\$191.10	\$191.10	\$191.10
5. Crew Member	\$53.90	\$53.90	\$53.90	\$58.80	\$58.80	\$58.80
6. Truck Driver	\$58.80	\$58.80	\$58.80	\$64.68	\$64.68	\$64.68
<b>EQUIPMENT (LIST DESCRIPTIONS) (DAILY RATE)</b>						
1. Weedoo; includes: hoses, floats, turbidity curtain, tender vessel, fuel	\$4,900.00	\$4,900.00	\$4,900.00	\$5,373.34	\$5,373.34	\$5,373.34
2. Dewatering Tanks; includes; geotube, hoses, vibrators	\$784.00	\$784.00	\$784.00	\$859.46	\$859.46	\$859.46
3. Vacuum Pump; includes hoses, fuel	\$49.00	\$49.00	\$49.00	\$53.90	\$53.90	\$53.90
4. Chemical trailer; includes generator, fuel, chemicals	\$2,156.00	\$2,156.00	\$2,156.00	\$2,364.74	\$2,364.74	\$2,364.74
5. Roll-Off Truck; includes fuel	\$637.00	\$637.00	\$637.00	\$698.74	\$698.74	\$698.74
6. Storage Trailer; includes hand tools	\$245.00	\$245.00	\$245.00	\$268.52	\$268.52	\$268.52
<b>MOBILIZATION / DEMOBILIZATION (FIXED PRICE)</b>						
1. Mobilization	\$46,942.00	\$46,942.00	\$46,942.00	\$51,479.40	\$51,479.40	\$51,479.40
2. Demobilization	\$16,709.00	\$16,709.00	\$16,709.00	\$18,324.04	\$18,324.04	\$18,324.04

BEST AND FINAL OFFER RATE SHEET FOR SOUTH DISTRICT						
SERVICE	NOT TO EXCEED RATES					
	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3	Renewal Term Year 1	Renewal Term Year 2	Renewal Term Year 3
<b>AIR QUALITY MONITORING (PER ANALYSIS)</b>						
1. Ozone	\$55.00	\$55.00	\$55.00	\$60.00	\$60.00	\$60.00
<b>RETURN WATER MONITORING (PER ANALYSIS)</b>						
1. Cyantoxins	\$95.00	\$95.00	\$95.00	\$104.00	\$104.00	\$104.00
2. Residual Polymer	\$85.00	\$85.00	\$85.00	\$93.00	\$93.00	\$93.00
<b>DISPOSAL COSTS (FIXED PRICE)</b>						
1.	\$17,650.00	\$17,650.00	\$17,650.00	\$19,356.00	\$19,356.00	\$19,356.00
<b>PERSONNEL (LIST ALL EMPLOYEE DESCRIPTIONS) (HOURLY RATE)</b>						
1. President	\$150.00	\$150.00	\$150.00	\$164.00	\$164.00	\$164.00
2. Operations Manager	\$85.00	\$85.00	\$85.00	\$93.00	\$93.00	\$93.00
3. Project Superintendent	\$75.00	\$75.00	\$75.00	\$82.00	\$82.00	\$82.00
4. Equipment Operator (Weedoo)	\$178.00	\$178.00	\$178.00	\$195.00	\$195.00	\$195.00
5. Crew Member	\$55.00	\$55.00	\$55.00	\$60.00	\$60.00	\$60.00
6. Truck Driver	\$60.00	\$60.00	\$60.00	\$66.00	\$66.00	\$66.00
<b>EQUIPMENT (LIST DESCRIPTIONS) (DAILY RATE)</b>						
1. Weedoo; includes: hoses, floats, turbidity curtain, tender vessel, fuel	\$5,000.00	\$5,000.00	\$5,000.00	\$5,483.00	\$5,483.00	\$5,483.00
2. Dewatering Tanks; includes: geotube, hoses, vibrators	\$800.00	\$800.00	\$800.00	\$877.00	\$877.00	\$877.00
3. Vacuum Pump; includes hoses, fuel	\$50.00	\$50.00	\$50.00	\$55.00	\$55.00	\$55.00
4. Chemical trailer; includes generator, fuel, chemicals	\$2,200.00	\$2,200.00	\$2,200.00	\$2,413.00	\$2,413.00	\$2,413.00
5. Roll-Off Truck; includes fuel	\$650.00	\$650.00	\$650.00	\$713.00	\$713.00	\$713.00
6. Storage Trailer; includes hand tools	\$250.00	\$250.00	\$250.00	\$274.00	\$274.00	\$274.00
<b>MOBILIZATION / DEMOBILIZATION (FIXED PRICE)</b>						
1. Mobilization	\$47,900.00	\$47,900.00	\$47,900.00	\$52,530.00	\$52,530.00	\$52,530.00
2. Demobilization	\$17,050.00	\$17,050.00	\$17,050.00	\$18,698.00	\$18,698.00	\$18,698.00

BEST AND FINAL OFFER RATE SHEET FOR SOUTHEAST DISTRICT							
SERVICE	NOT TO EXCEED RATES						
	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3		Renewal Term Year 1	Renewal Term Year 2	Renewal Term Year 3
AIR QUALITY MONITORING (PER ANALYSIS)							
1. Ozone	\$55.00	\$55.00	\$55.00		\$60.00	\$60.00	\$60.00
RETURN WATER MONITORING (PER ANALYSIS)							
1. Cyantoxins	\$95.00	\$95.00	\$95.00		\$104.00	\$104.00	\$104.00
2. Residual Polymer	\$85.00	\$85.00	\$85.00		\$93.00	\$93.00	\$93.00
DISPOSAL COSTS (FIXED PRICE)							
1.	\$17,650.00	\$17,650.00	\$17,650.00		\$19,356.00	\$19,356.00	\$19,356.00
PERSONNEL (LIST ALL EMPLOYEE DESCRIPTIONS) (HOURLY RATE)							
1. President	\$150.00	\$150.00	\$150.00		\$164.00	\$164.00	\$164.00
2. Operations Manager	\$85.00	\$85.00	\$85.00		\$93.00	\$93.00	\$93.00
3. Project Superintendent	\$75.00	\$75.00	\$75.00		\$82.00	\$82.00	\$82.00
4. Equipment Operator (Weedoo)	\$178.00	\$178.00	\$178.00		\$195.00	\$195.00	\$195.00
5. Crew Member	\$55.00	\$55.00	\$55.00		\$60.00	\$60.00	\$60.00
6. Truck Driver	\$60.00	\$60.00	\$60.00		\$66.00	\$66.00	\$66.00
EQUIPMENT (LIST DESCRIPTIONS) (DAILY RATE)							
1. Weedoo; includes: hoses, floats, turbidity curtain, tender vessel, fuel	\$5,000.00	\$5,000.00	\$5,000.00		\$5,483.00	\$5,483.00	\$5,483.00
2. Dewatering Tanks; includes: geotube, hoses, vibrators	\$800.00	\$800.00	\$800.00		\$877.00	\$877.00	\$877.00
3. Vacuum Pump; includes hoses, fuel	\$50.00	\$50.00	\$50.00		\$55.00	\$55.00	\$55.00
4. Chemical trailer; includes generator, fuel, chemicals	\$2,200.00	\$2,200.00	\$2,200.00		\$2,413.00	\$2,413.00	\$2,413.00
5. Roll-Off Truck; includes fuel	\$650.00	\$650.00	\$650.00		\$713.00	\$713.00	\$713.00
6. Storage Trailer; includes hand tools	\$250.00	\$250.00	\$250.00		\$274.00	\$274.00	\$274.00
MOBILIZATION / DEMOBILIZATION (FIXED PRICE)							
1. Mobilization	\$47,900.00	\$47,900.00	\$47,900.00		\$52,530.00	\$52,530.00	\$52,530.00
2. Demobilization	\$17,050.00	\$17,050.00	\$17,050.00		\$18,698.00	\$18,698.00	\$18,698.00
3.							
4.							
5.							

**ATTACHMENT C – TASK ASSIGNMENT FORM**

DEP CONTRACT NO. \_\_\_\_\_

Task Assignment Number: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Representative: \_\_\_\_\_

DEP Contract Manager: \_\_\_\_\_

Task Description (Use additional sheets if necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Deliverables: \_\_\_\_\_

\_\_\_\_\_

Performance Measures: \_\_\_\_\_

Financial Consequences: \_\_\_\_\_

Period of Performance: Execution of Task Assignment through \_\_\_\_\_

TASK ASSIGNMENT TYPE AND NOT TO EXCEED AMOUNTS:

FEE SCHEDULE	COST REIMBURSEMENT

TOTAL TASK ASSIGNMENT VALUE \$ \_\_\_\_\_

Funding Information:

Org. Code	E.O.	Object Code	Budget Entity	Special Category	Grant #	Year	Amount
37						\$	
37						\$	
37						\$	

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 D – TASK ASSIGNMENT CHANGE ORDER FORM

DEP CONTRACT NO. \_\_\_\_\_

Task Assignment Number: \_\_\_\_\_ Date: \_\_\_\_\_ Change Order No. \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Contract Manager: \_\_\_\_\_ Phone: \_\_\_\_\_

DEP Contract Manager: \_\_\_\_\_ Phone: \_\_\_\_\_

Description of Change (Use Additional Sheets if necessary):

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### CHANGE IN TASK AMOUNT

<u>Item</u>	<u>Fee Schedule</u>	<u>Cost Reimbursement</u>	<u>Total</u>
Original Task Amount:	_____	_____	_____
Task Amount Prior to this Change Order:	_____	_____	_____
Net Increase/Decrease in Task Amount:	_____	_____	_____
Task Amount with all Change Orders:	_____	_____	_____

### CHANGE IN TASK TIME

Original Task Completion Date:	_____
Completion Date Prior to This Change:	_____
Net Increase/Decrease in Task Period:	_____
Completion Date with all Change Orders:	_____

### CONTRACTOR

FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Contract Manager	Date	Contract Manager	Date
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APPROVED:

_____	_____
Cost Center Administrator	Date

cc: DEP Procurement Section (MS93), Bureau of Finance and 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  
(name of person appearing) (title of person appearing)  
\_\_\_\_\_ with the authority to  
(name of Contractor)  
make this statement on behalf;
2. \_\_\_\_\_ ("the Contractor") entered into an  
(name of company or person)  
Agreement with the Department to perform certain work under Task Assignment No. \_\_\_\_\_.
3. Contractor has completed the work in accordance with the aforementioned Work Assignment, including all attachments. Thereto.
4. All subcontractors, if authorized under this Contract, 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, if authorized under this Contract 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) \_\_\_\_\_

**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](mailto: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

**ATTACHMENT G**

**LIQUIDATED DAMAGES ASSESSMENT FORM**

To: Bureau of Finance and Accounting, Contracts Disbursements Section (MS 78)

Through: Office of General Counsel

From: \_\_\_\_\_, Contract Manager

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

Subject: Liquidated Damages

Contractor/Vendor: \_\_\_\_\_

DEP Contract No: \_\_\_\_\_ Task Assignment/PO No.: \_\_\_\_\_

The Contractor/Vendor did not complete the work covered by the referenced Contract/Task Assignment/PO in the time frame provided. Contractor gave the following reasons for the delay:

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The Contract/Task Assignment/PO provides that liquidated damages may be assessed for failure of the Contractor/Vendor to meet Contract/Task Assignment/PO terms and conditions, except for reasons beyond the control of the Contractor/Vendor. Therefore:

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- ☐ I recommend that liquidated damages be assessed.
- ☐ I recommend that liquidated damages not be assessed.
- ☐ I recommend that only \$ of liquidated damages provided for be assessed, for the following reasons:

Explanation/Calculations: \_\_\_\_\_

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Complete all information above, attach to invoice and relevant contract documents with all processing information completed and forward to the Contracts Disbursements Section (MS 78) for final processing once approved by the Office of General Counsel.

Approval: ☐ As recommended ☐ \$\_\_\_\_\_ in Liquidated Damages

Disapproved: ☐

\_\_\_\_\_  
DEP Contracts Attorney

\_\_\_\_\_  
Date

## **ATTACHMENT H**

### **State of Florida PUR 1000 General Contract Conditions**

#### **Contents**

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.

- 42. Modification of Terms.
- 43. Cooperative Purchasing.
- 44. Waiver.
- 45. Annual Appropriations.
- 46. Execution in Counterparts.
- 47. Severability.

**1. Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
- (b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.
- (c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.
- (d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

**2. Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

**3. Product Version.** Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

**4. Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.

- (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

- (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
  - (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
  - (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
  - (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
5. **Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
6. **Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
7. **Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
8. **Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of

Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

- 9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
- 10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- 11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
- 12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.
- 13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.
- 14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) 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 or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering reprocurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

- 15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

- 16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State 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 the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.
- 17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

**19. Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and 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 Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

- 20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

- 21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

- 22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

- 23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the

required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

- 24. Force Majeure, Notice of Delay, and No Damages for Delay.** The 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 or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, 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 Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) 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 five (5) 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 against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer 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 Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers 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.
- 25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.
- 26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.
- 27. Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's

terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**29. Assignment.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

**30. Antitrust Assignment.** The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

**31. Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

**32. Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

**34. Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

**35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated

with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

- 36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- 37. Warranty of Ability to Perform.** The 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. The 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. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.
- 38. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.
- 39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.
- 40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.
- 41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed 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, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; 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 dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the 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. The Customer'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.

**43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

**44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

**46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**47. Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.