

REQUEST FOR QUALIFICATIONS

RFQ Number: MDEQ-RFQ04152020

**To Provide: Professional Engineering Services for
Environmental Assessments and Remediations**

Issue Date: Wednesday, April 15, 2020

CLOSING LOCATION

Mississippi Department of Environmental Quality
515 East Amite Street
Jackson, MS 39201

REQUEST FOR QUALIFICATIONS COORDINATOR

Aveleka Moore, Contracts Division Director

Telephone: (601) 961-5107

Fax: (601) 961-5715

E-mail: amoore@mdeq.ms.gov

CLOSING DATE AND TIME

Qualifications must be received by 9:00 a.m., Wednesday, May 20, 2020

SECTION 1

1.1 Qualifications Acceptance Period

The original and two (2) copies of the Statement of Qualifications, three (3) total , along with one (1) digital copy in PDF format on a USB flash drive shall be signed and submitted in a sealed envelope or package to 515 East Amite Street, Jackson, MS 39201 no later than the time and date specified for receipt of Statement of Qualifications. Timely submission is the responsibility of the respondent. Statements of Qualifications ("SOQ") received after the specified time shall be rejected and returned to the respondent unopened. The envelope or package shall be marked with the Request for Qualifications ("RFQ") opening date and time, and the RFQ number. The time and date of receipt shall be indicated on the envelope or package by Mississippi Department of Environmental Quality ("MDEQ"). Each page of the statement of qualifications and all attachments shall be identified with the name of the respondent. Modifications or additions to any portion of the procurement document may be cause for rejection of the statement of qualifications. MDEQ reserves the right to decide, on a case-by-case basis, whether to reject a statement of qualifications with modifications or additions as non-responsive. As a precondition to statement of qualifications acceptance, MDEQ may request the respondent to withdraw or modify those portions of the statement of qualifications deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service.

1.1.1. Timeline

- **Request for Qualifications (RFQ) Issue Date:** Wednesday, April 15, 2020
- **Questions to MDEQ Deadline:** Wednesday, April 29, 2020 at 12:00 p.m.
- **Anticipated Response of Answers to Questions:** Friday, May 1, 2020
- **SOQ Package Submission Deadline:** Wednesday, May 20, 2020 at 9:00 a.m.
- **SOQ Package Opening:** Wednesday, May 20, 2020 at 10:00 a.m.
- **Anticipated Notice of Intent to Award:** Monday, June 15, 2020
- **Anticipated Post-Award Debriefing Request Date:** Thursday, June 18, 2020
- **Post-Award Debriefing Held by Date:** Tuesday, June 23, 2020
- **Protest Deadline Date:** Monday, June 22, 2020 at 12:00 p.m.

1.1.2. Late Submissions

A Statement of Qualifications received at the place designated in the solicitation for receipt of statement of qualifications after the exact time specified for receipt will not be considered unless it is the only statement of qualifications received, or it is received before award is made and was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of statement of qualifications. Where applicable, MDEQ will determine whether the late receipt was due solely to mishandling by MDEQ after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late statement of qualifications is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been

supplied and affixed by the U.S. Postal Service on the date of mailing. Respondents should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the office identified for opening of statements of qualifications is the time and date stamp of that office on the statement of qualifications wrapper or other documentary evidence of receipt used by that office.

1.2 Expenses Incurred in Preparing Statement of Qualifications

MDEQ accepts no responsibility for any expense incurred by the respondent in the preparation and presentation of a SOQ. Such expenses shall be borne exclusively by the respondent.

1.3 Registration with Mississippi Secretary of State

By submitting a SOQ, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

1.4 Debarment

By submitting a SOQ, the respondent certifies that it is not currently debarred from submitting statements of qualifications for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government and that it is not an agent of a person or entity that is currently debarred from submitting SOQ for contracts issued by any political subdivision or agency of the State of Mississippi.

1.5 Additional Information

Questions about the contract portions or technical portions of the procurement document must be submitted in writing no later than the date and time specified for Questions to MDEQ to Aveleka Moore at amoore@mdeq.ms.gov. Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the SOQ document shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

1.6 Acknowledgement of Amendments

Respondents shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the SOQ, by identifying the amendment number and date in the space provided for this purpose on the SOQ form, or by letter. The acknowledgement must be received by MDEQ by the time and at the place specified for receipt of statements of qualifications.

1.7 Type of Contract

Compensation for services will be in the form of an Indefinite Quantity agreement.

1.8 Written Statement of Qualifications

All statements of qualifications shall be in writing.

SECTION 2

2.1 Compensation for Services

The Compensation for services requested under this RFQ will be according to the rates and requirements included in the MDEQ Underground Storage Tank Branch Reimbursement Procedures and Limitations for Environmental Response Action Contractor (“ERAC”) Expense Reimbursement Requests from the Mississippi Groundwater Protection Trust Fund, which is attached hereto as Attachment E.

2.2 Purpose

Mississippi Department of Environmental Quality is seeking to establish contracts to perform environmental assessments, groundwater monitoring, remediation, and associated activities at contaminated sites in Mississippi that involve a release from underground storage tank system(s) and/or contamination at Groundwater Assessment and Remediation Division (“GARD”) regulated sites. Work may be funded by the Federal Leaking Underground Storage Tanks (“LUST”) Trust Fund, the Mississippi Groundwater Protection Trust Fund, MDEQ Brownfield funds, or other MDEQ funds and will require adherence to the applicable conditions for each.

2.3 Scope of Services

MDEQ will make award to the selected applicant(s) whose offers conform to this solicitation and are most advantageous to MDEQ based on the following factors:

A. Environmental Assessment Experience and Past Performance

Demonstrated experience and success of applicant and its key personnel in conducting environmental assessments. Consideration may be given to applicants and key personnel for assessment experience and performance at sites in Mississippi that involved motor fuel contamination caused by a release from underground storage tank system(s) and/or involved Brownfield environmental site assessments.

B. Remediation Experience and Past Performance

Demonstrated experience and success of applicant and its key personnel in conducting contaminated groundwater and soil remediation. Consideration may be given to applicants and key personnel for groundwater/soil remediation experience and remediation success in Mississippi associated with motor fuel contamination from leaking underground storage tank system(s) and mitigating threats from vapor intrusion in Mississippi.

C. Adequacy of Project Management

Demonstrated managerial experience of the proposed key personnel who will be assigned management oversight responsibilities under the resulting contract, in successfully managing contracts of a similar size and scope to the requirements of this solicitation. Demonstrated organization and availability of lead office personnel, other key personnel, and satellite offices, if applicable.

Selection of environmental firms, in addition to the minimum requirements, will be based on the following criteria: (1) qualifications of firm and key personnel as related to experience and past performance in the conduct of assessing contaminated soils and, groundwater, in the State of Mississippi; (2) qualifications of firm and key personnel as related to experience and past performance in the conduct of remediating contaminated soils and groundwater caused by motor fuel release(s) from leaking underground storage tank system(s) in the State of Mississippi; and other contaminant sources, and (3) qualifications of firm and key personnel as related to experience and past performance on Brownfield assessments, and (4) adequacy of project management.

2.4 Term

The term of the contract shall be for a period of four (4) years with an option to renew for one (1) year, upon written agreement of both parties, and under the same prices, terms, and conditions as in the original contract. The total contract term, including any renewals, shall not exceed a maximum total of five (5) years.

2.4.1 Multi-Term Contracts

Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

2.4.1.1 Requirements

- a) Four (4) years of service with an option to renew for one (1) year.
- b) A unit price shall be given for each service, and that unit price shall be the same throughout the contract.
- c) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.
- d) The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.

SECTION 3

3.1 Insurance

Contractor shall maintain during the period of performance of the contract the following liability insurance coverage, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, and shall require its subcontractors to maintain said coverage, related to the work of the contractor and in connection with the contract.

- A. The CONTRACTOR represents that it will maintain Worker's Compensation Insurance as prescribed by law which shall inure to the benefit of the CONTRACTOR's personnel, as well as comprehensive General Liability in an amount no less than \$500,000.00 combined single limit and Employee Fidelity Bond Insurance. The CONTRACTOR shall comply with applicable federal, state and local laws and regulations.

For all of the insurance coverage required in Paragraph A, MDEQ, MDEQ's Commissioners, officers, employees, agents, and representatives, and the State of Mississippi shall be named as additional insureds or loss payee on such policies as the circumstances may require. Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The parties (and their respective insurers) agree that Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ and that any insurance covering MDEQ shall be excess coverage over Contractor's coverage. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy.

Upon execution of the Contract, Contractor shall promptly furnish MDEQ with endorsements showing the Contractor compliance with the insurance provisions of this paragraph. While Contractor shall provide MDEQ with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Agreement, does not constitute waiver or estoppels as to MDEQ of their respective legal and equitable rights, including but not limited to, the right to enforce the terms of the Contract. These contractual insurance provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the provisions addressing the indemnity of MDEQ by Contractor.

SECTION 4

4.1 Written Statement of Qualifications Shall Contain the Following Minimum Information

- 1) The name of the respondent, the location of the respondent's principal place of business and, if different, the place of performance of the proposed contract;
- 2) The age of the respondents' business and average number of employees over a previous period of time, as specified in the Request for Qualifications;

- 3) The qualifications, including licenses, certifications, education, skills, and experience of all persons who would be assigned to provide the required services;
- 4) A listing of other contracts under which services similar in scope, size, or discipline to the required services performed or undertaken within a previous period of time, as specified in the Request for Qualifications.
- 5) Attachment A and Attachment B must be completed, signed, and included as part of the SOQ.

4.2 Minimum Qualifications

Respondents will be evaluated based on requirements set forth in MDEQ-RFQ04152020. Those criteria that will affect the statement of qualifications and be considered in evaluation for award shall be objectively measurable where possible. This Request for Qualifications sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set in this Request for Qualifications. Only respondents who are found responsive and responsible will have their Statement of Qualifications considered.

- A. The SOQs shall be limited to no more than a total of forty (40) typed pages duplexed including contents pages, supporting appendices, resumes, etc., (the page count includes every printed page except for the front and back cover, the transmittal letter, and any other exemption stated herein). Any information contained on pages that exceed the page limit may not be evaluated. Paper size shall be 8 1/2" x 11". Text shall not be smaller than a font size of 10. Respondents shall submit the signed original and two (2) true and complete copies of the original SOQ, along with one (1) digital copy of the SOQ in PDF format on a USB flash drive, in a sealed envelope or package to MDEQ on or before the date and time specified. The original must be signed by an authorized representative of the Respondent.
- B. The SOQ shall include detailed information regarding the title of firm, and the address and telephone number of the lead office that will manage the work for all assigned sites.
- C. The applicant shall be an approved MDEQ Environmental Response Action Contractor and an approved MDEQ Brownfield Consulting Firm.
- D. The SOQ shall include written documentation demonstrating that the applicant employs **within the lead office** a minimum of one full-time professional engineer registered in the State of Mississippi, **and state the specific individuals in the professional engineer(s) role.**

- E. The SOQ shall include written documentation demonstrating that the applicant employees a minimum of one full-time registered professional geologist licensed in the State of Mississippi and shall state the specific individuals in the registered professional geologist(s) role.
- F. The applicant shall list the names, telephone numbers, email addresses, and the office locations of the key personnel to be dedicated to this project. For the purpose of this notice, “key personnel” is defined as registered professional engineers and geologist, and degreed engineers and geologist, and scientists. Substitutions during the term of this project must meet equivalent experience and qualifications as determined by MDEQ. **The applicant shall not substitute key personnel without prior MDEQ approval.**
- G. The SOQ shall include a list of applicant’s references that are familiar with applicant’s ability to perform the work outlined in this SOQ. **The SOQ should also include a statement that MDEQ has the authority to contact applicant’s clients listed in the SOQ.**
- H. The SOQ shall address each of the factors described in Section 2.3. Scope of Work and shall be prepared in exactly the same order, using the same lettering system for all factors.

4.2.1 Responsive Respondent

Respondent must submit statement of qualifications which conforms in all material respect to this Request for Qualifications, MDEQ-RFQ04152020, as determined by MDEQ.

4.2.2 Responsible Respondent

Respondent must have capability in all aspects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by MDEQ.

4.3 Nonconforming Terms and Conditions

A statement of qualifications that includes terms and conditions that do not conform to the terms and conditions in the Request for Qualifications is subject to rejection as non-responsive. MDEQ reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its statement of qualifications response prior to a determination by MDEQ of non-responsiveness based on the submission of nonconforming terms and conditions.

4.4 Conditioning Statement of Qualifications Upon Other Awards

Any statement of qualifications which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.5 Evaluation Procedure

4.5.1 Evaluation Factors

***Technical factors – 45%**

- (a) Does the respondent's SOQ demonstrate a clear understanding of the scope of work and related objectives? **5%**
- (b) Is the respondent's SOQ complete and responsive to the specific RFQ requirements? **10%**
- (c) Has the past performance of the respondent's proposed methodology been documented? **15%**
- (d) Does the respondent's SOQ use innovative technology and techniques? **15%**

***Cost factors – 10%**

- (a) Assurances of performance:
 - a. Does the SOQ include quality control and assurance programs? **10%**

***Management factors – 45%**

- (a) History and experience in performing the work:
 - a. Does the respondent document a record of reliability of timely delivery and on-time and on-budget implementation? **10%**
 - b. Does the respondent demonstrate a track record of service as evidenced by on-time, on-budget, and contract compliance performance? **15%**
 - c. Does the respondent document industry or program experience? **5%**
- (b) Availability of personnel, facilities, equipment and other resources:
 - a. Are the availability of in-house and contract resources documented? **5%**
- (c) Qualification and experience of personnel:
 - a. Documentation of experience in performing similar work by employees and when appropriate, sub-contractors? **5%**
 - b. Does the respondent demonstrate cultural sensitivity in hiring and training staff? **5%**

4.5.2 Submission Format

The SOQs shall be limited to no more than a total of forty (40) typed pages duplexed including contents pages, supporting appendices, resumes, etc., (the page count includes every printed page except for the front and back cover, the transmittal letter, and any other exemption stated herein). Any information contained on pages that exceed the page limit may not be evaluated. Paper size shall

be 8 1/2" x 11". Text shall not be smaller than a font size of 10. Respondents shall submit the signed original and two (2) true and complete copies of the original SOQ, along with one (1) digital copy of the SOQ in PDF format on a USB flash drive, in a sealed envelope or package to MDEQ on or before the date and time specified. The original must be signed by an authorized representative of the Respondent.

4.6 Award

The contract will be awarded by written notice, to the highest ranked respondent(s) whose statement of qualifications meets the requirements and criteria set forth in this Request for Qualifications.

4.6.1 Notification

All participating vendors will be notified of MDEQ's intent to award a contract. In addition, MDEQ will identify the selected vendor(s). Notice of award is also made available to the public.

SECTION 5

5.1 Post-Award Vendor Debriefing

A respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Executive Director of MDEQ within three (3) business days of notification of the contract award. A post- award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing must occur within three (3) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Executive Director of MDEQ in writing and identify its attorney by name, address, and telephone number. MDEQ will schedule and/or suspend and reschedule the meeting at a time when legal counsel can be present.

Unless good cause exists for delay, the debriefing should occur within three (3) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the agency. The Chief Procurement Officer or designee should chair the meeting, and where practicable, include other staff with direct knowledge of the procurement.

At a minimum, the debriefing information shall include the following:

- (1) The agency's evaluation of significant weaknesses or deficiencies in the vendor's SOQ, proposal, or qualifications, if applicable;
- (2) The overall evaluated cost or price, and technical rating, if applicable, of the successful vendor(s) and the debriefed vendor;
- (3) The overall ranking of all vendors, when any ranking was developed by the agency during the selection process;

- (4) A summary of the rationale for award; and,
- (5) Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

The debriefing shall not include point-by-point comparisons of the debriefed vendor's SOQ, proposal, or qualification with those of other offering vendors. Any written request by a vendor for nondisclosure of trade secrets and other proprietary data is subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 and §§ 75-26-1 through 75-26-19.

5.2 Protest of Award

Any actual or prospective respondent or contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Qualifications may file a protest with the Request for Qualifications Coordinator, Aveleka Moore, Contracts Division Director. The protest shall be submitted on or before the date and time specified, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the respondent or an individual authorized to sign contracts on behalf of the protesting respondent, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Request for Qualifications Coordinator, Aveleka Moore, Contracts Division Director, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after the date and time specified, will not be considered.

5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent shall include the required clauses found in **Attachment C** and those required by the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* as updated.

5.4 Optional Contract Terms and Conditions

Any contract entered into between MDEQ and a vendor/respondent may have, at the discretion of MDEQ, the optional clauses found in **Attachment D**.

5.5 Mississippi Contract/Procurement Opportunity Search Portal

This Request for Qualifications, and the questions and answers concerning this Request for Qualifications, are posted on the Contract/Procurement Opportunity Search Portal.

5.6 Attachments

The attachments to this Request for Qualifications are made a part of this Request for Qualifications as if copied herein in words and figures.

Attachment A

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands the Request for Qualifications, MDEQ-RFQ04152020, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Request for Qualifications, MDEQ-RFQ04152020, and attachments herein;
3. That the company agrees to all provisions of this Request for Qualifications, MDEQ-RFQ04152020, and the attachments herein;
4. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Request for Qualifications.

Printed Name: _____

Signature: _____

Date: _____

Attachment B

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the respondent to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by **circling the applicable word or words in each paragraph below:**

1. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it **has/has not** retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's SOQ.

2. REPRESENTATION REGARDING GRATUITIES

The respondent or Contractor represents that it **has/has not** violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The respondent certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other respondent or competitor relating to those prices, the intention to submit a SOQ, or the methods or factors used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's SOQ that such Contractor **has/has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Name: _____

Signature: _____

Title: _____

Date: _____

Note: Please be sure to **circle the applicable word or words** provided above. Failure to circle the applicable word or words and/or to sign the form may result in the SOQ being rejected as nonresponsive. **Modifications or additions to any portion of this document may be cause for rejection of the SOQ.**

Attachment C

Required Clauses for Service Contracts Resulting from this Request for Qualifications

1. Applicable Law

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

2. Availability of Funds

It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

3. Acknowledgment of Amendments

Respondents shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the SOQ, by identifying the amendment number and date in the space provided for this purpose on the form, or by letter. The acknowledgement must be received by DFA by the time and at the place specified for receipt of SOQ.

4. Compliance with Laws

Contractor understands that the Agency is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

5. E-Payment

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public

Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*

6. E-Verification

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or both.
- c) In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

7. Paymode

Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor’s choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

8. Representation Regarding Contingent Fees

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor’s SOQ or proposal.

9. Representation Regarding Gratuities

Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review board Office of Personal Service Contract Review Rules and Regulations*.

10. Stop Work Order

- a) *Order to Stop Work:* The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:
 - i. cancel the stop work order; or,
 - ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- b) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 - i. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
 - ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c) *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

11. Termination for Convenience

- a) *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The

Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

- b) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

12 Termination for Default

- a) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- c) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes;

freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one (1) or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- e) *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- f) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

13. Termination Upon Bankruptcy

This contract may be terminated in whole or in part by Agency upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

14. Trade Secrets, Commercial and Financial Information

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

15. Transparency

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79- 23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act

of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

Attachment D

Optional Clauses for Use in Service Contracts Resulting from this Statement of Qualifications

1. Anti-assignment/Subcontracting

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

2. Antitrust

By entering into this Contract, Contractor conveys, sells, assigns, and transfers to MDEQ all rights, titles, and interest it may now have, or hereafter acquire, under the antitrust laws of the United States and the State that relate to the services purchased or acquired by MDEQ under this Contract.

3. Attorney's Fees and Expenses

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

4. Authority to Contract

Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

5. Change in Scope of Work

MDEQ may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the Project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by MDEQ and Contractor.

If Contractor believes that any particular work is not within the scope of the Project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify MDEQ in writing of this belief. If MDEQ believes that the particular work is within the scope of the Contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the services within the Contract.

6. Claims based on a Chief Procurement Officer's Actions or Omissions

A. *Notice of Claim.* If any action or omission on the part of a Chief Procurement Officer or designee of such officer requiring performance changes within the scope of the Contract constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:

(1) Contractor shall have given written notice to the Chief Procurement Officer or designee of such officer:

- (i) prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
- (ii) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
- (iii) within such further time as may be allowed by the Chief Procurement Officer in writing.

This notice required shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time; and the procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Chief Procurement Officer or designee of such officer;

- (2) The notice required by subparagraph (1) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,
 - (3) Contractor maintains and, upon request, makes available to the Chief Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- B. *Limitation of Clause.* Nothing contained herein shall excuse Contractor from compliance with any rules of law precluding state officers and Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- C. *Adjustment of Price.* Any adjustment in the Contract price made pursuant to this clause shall be determined in accordance with the “Price Adjustment” clause of this Contract.

7. Confidential Information

“Confidential Information” shall mean: (a) those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential; and, (b) all data and information which Contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidential by the State. Each party to this Contract agrees to the following:

- (1) to protect all confidential information provided by one party to the other;
- (2) to treat all such confidential information as confidential to the extent that confidential treatment is allowed under state and/or federal law; and,
- (3) except as otherwise required by law, not to publish or disclose such information to any third party without the other party’s written permission; and
- (4) to do so by using those methods and procedures normally used to protect the party’s own confidential information.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this Contract.

8. Confidentiality

- A. *Information Designated by Contractor as Confidential.* Any disclosure of those materials, documents, data and other information, which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Contract, the personal or professional services to be provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information.
- B. *Public Records.* Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDEQ pursuant to this Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MDEQ shall follow provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to Contractor for disclosure of information required by court order or required by law.
- C. *Disclosure of Confidential Information.* In the event that either party to this Contract receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*
- D. *Wrongful Disclosure of Confidential Information.* Any liability resulting from the wrongful disclosure of Confidential Information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any Confidential Information by Contractor or its subcontractor without the express written approval of MDEQ may result in the immediate termination of this Contract.
- E. *Exceptions to Confidential Information.* Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“Disclosing Party”) which is:
 - (1) Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements;
 - (2) Generally known or easily ascertainable by nonparties to this Contract;
 - (3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;

- (4) Independently developed by the recipient without any reliance on confidential information;
- (5) Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or
- (6) Disclosed with the Disclosing Party's prior written consent; or
- (7) Otherwise required to be disclosed by law.

9. Conflict of Interest

Contractor shall immediately notify MDEQ in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to the U.S. Department of the Treasury, RESTORE Council, MDEQ, or the Project that would impinge on Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDEQ's satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Contract per the Termination for Convenience clause of this Contract.

10. Contractor Personnel

The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

11. Counterparts

This Contract may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

12. Debarment and Suspension

Contractor certifies to the best of its knowledge and belief, that it:

- A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- B. has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- C. has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
- E. has not, within a three-year period preceding this bid, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.

13. Failure to Deliver

In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.

14. Failure to Enforce

Failure by the Agency at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Agency to enforce any provision at any time in accordance with its terms.

15. Final Payment

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state

law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against Contractor under this contract.

16. Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

17. HIPAA Compliance

Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

18. Indemnification

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

19. Infringement Indemnification

Contractor warrants that the materials and deliverables provided to MDEQ under this Contract, and their use by MDEQ, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action

and/or obtain for the customer the right to continue using such items. Should Contractor fail to obtain for the customer the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require the customer to discontinue using such items, in which case Contractor will refund to the customer the fees previously paid by the customer for the items the customer may no longer use and shall compensate the customer for the lost value of the infringing part to the phase in which it was used up to and including the Contract price for said phase. Said refund shall be paid within ten (10) working days of notice to the customer to discontinue said use.

Scope of Indemnification: Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate, at its own expense, MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi, against and pay all costs, including discovery costs, damages (including punitive damages) and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this Contract.

20. Independent Contractor Status

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

21. Integrated Agreement/Merger

This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement

shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

22. Modification or Renegotiation

This contract may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

23. No Limitation of Liability

Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.

24. Notices

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

For the Agency:	For Contractor:
Aveleka Moore, Contracts Division Director	[Name, Title]
MDEQ	[Contractor Name]
515 East Amite Street	[Address]
Jackson, MS 39201	[City, State, Zip]

25. Non-solicitation of Employees

Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.

26. Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by Contractor.

27. Ownership of Documents and Work Papers

Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.

28. Priority

The contract consists of this agreement with exhibits, the Request for Qualifications MDEQ-RFQ04152020 (hereinafter referred to as "RFQ", and attached as Exhibit []), and the response bid dated [date] by [CONTRACTOR NAME] (hereinafter referred to as "SOQ" and attached as Exhibit []). Any ambiguities, conflicts or questions interpretation of this contract shall be resolved by first, reference to this agreement/contract with exhibits and, if still unresolved, by reference to the RFQ and, if still unresolved, by reference to the SOQ. Omission of any term or obligation from this agreement or attached Exhibits [] or [] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

29. Record Retention and Access to Records

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. Except as provided below, all records related to this Contract shall be retained by Contractor for a minimum of ten (10) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

Contractor is not required to retain the above-mentioned records for the ten-year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. Contractor has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. no audit, litigation or other action arising out of or related in any way to this Project is commenced before Contractor provides the records and corresponding certification to MDEQ, in which case, Contractor shall retain the records until all issues arising out of the action are finally resolved; and

C. Contractor provides MDEQ a minimum of thirty (30) days' written notice before providing the above-mentioned records and corresponding certification.

30. Recovery of Money

Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.

31. Right to Audit

Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. These records shall be made available during the term of the contract and the subsequent retention period, as applicable under the "Record Retention and Access to Record" provision of this contract for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

32. Right to Inspect Facility

The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.

33. Severability

If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

34. State Property

Contractor will be responsible for the proper custody and care of any state- owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

35. Third Party Action Notification

Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

36. Unsatisfactory Work

If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

37. Waiver

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

38. Headings

The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.

ATTACHMENT E

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANK BRANCH**

REIMBURSEMENT PROCEDURES AND LIMITATIONS

For

**Environmental Response Action Contractor (ERAC)
Expense Reimbursement Requests**

From The

MISSISSIPPI GROUNDWATER PROTECTION TRUST FUND

November 1, 2017

Revised February 28, 2018

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MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

Mississippi Groundwater Protection Trust Fund Reimbursement Procedures and Limitations for Time and Materials Not-to-Exceed And Fixed-Price Reimbursement Requests

1.0 TIME AND MATERIALS NOT-TO-EXCEED REIMBURSEMENT REQUESTS

Time and materials not-to-exceed reimbursement requests must include the environmental response action contractor's (ERAC's) invoice prepared in accordance with Section 2.0 and a certification affidavit completed by the tank owner as described in Section 4.0. Time and materials not-to-exceed reimbursement requests not submitted in accordance with the procedures and limitations contained herein may result in partial denial of the requested amount or the request may be returned and reimbursement for the entire amount of the request will be delayed until the deficiency is corrected. Reimbursement for uncompleted scopes of work or work not meeting minimum specifications shall be subject to deductions as determined by appropriate Mississippi Department of Environmental Quality (MDEQ) personnel.

A maximum of one reimbursement check will be issued for each scope of work, unless otherwise pre-approved by the Underground Storage Tank (UST) Branch, Contracting Officer. *Reimbursement will be processed only after the UST Project Manager has approved the final report, in writing.* Any deficiencies in the final work product noted by the UST Project Manager must be satisfied before reimbursement will be processed. It is the responsibility of the tank owner and/or ERAC to ensure that the invoice included in the request for reimbursement is indeed accurate, complete, and final. *Once the reimbursement is processed, it is final and no revisions to the request for reimbursement will be considered.* The tank owner has a *one year* time limit from the written MDEQ due date for the final work product to submit the reimbursement request, including re-submittals. Reimbursement requests submitted after this time limit will not be eligible for reimbursement.

Owner's and/or operator's reimbursement may be reduced by \$100/day for documents submitted after a written deadline date established by the MDEQ.

Before submitting the request for reimbursement, the tank owner should be able to answer yes to all of the following questions.

- ◆ Have I reviewed all invoices from my ERAC including any subcontractor invoices?
- ◆ Have I verified that all services represented by the invoice(s) have been delivered?
- ◆ Have I verified the invoice totals to be correct?
- ◆ Are detailed copies of all subcontractor invoices attached, if applicable?
- ◆ Are copies of motel receipts attached, if applicable?
- ◆ Are waste manifests attached, if applicable?
- ◆ Has the required certification affidavit been properly completed and notarized?
- ◆ Have I addressed my request for reimbursement to:

*Mississippi Department of Environmental Quality
Underground Storage Tank Branch
Attn: Financial Section
Post Office Box 2261
Jackson, MS 39225*

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2.0 TIME AND MATERIALS NOT-TO-EXCEED INVOICES

Reimbursement Requests submitted on a time and materials basis must be submitted in accordance with the procedures and limitations contained herein. The ERAC's invoice must be for actual, reasonable, allocable, and allowable charges/costs incurred in providing the approved scope of services subject to the limitations contained herein. It is the tank owner's responsibility to review each reimbursement request in detail to ensure each invoice is correct, is in proper form, and has all required legible receipts attached. Any invoice discrepancies must be corrected before submittal to the Department for reimbursement. All invoices submitted to the tank owner by the ERAC or by a subcontractor to the ERAC must be in sufficient detail as to the type and amount of work performed as described herein. A Summary Invoice and Cost Breakout must be submitted for all time and materials not-to-exceed reimbursement requests (a sample format for the Summary Invoice and Cost Breakout is included in Appendix B).

2.1 DIRECT LABOR

Direct labor billings must be shown under *separate* categories for *field work* and *office work*. Billings for *field work* must include the name of employee, labor classification, task, task date, hours worked, personnel hourly labor rate, and extended values. Billings for *office work* must include the name of the employee, labor classification, task, hours worked and the personnel hourly labor rate. MDEQ can require certified time sheets if detailed time and work activities are not provided. If the actual hours worked exceed the approved/billed hours on the invoice then documentation of the actual hours worked must be submitted with the reimbursement request in the form of a detailed breakout, a project detail sheet or time sheets. Maximum reimbursable hourly rates for labor and an explanation of personnel classifications are detailed in this section.

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PERSONNEL CLASSIFICATIONS AND QUALIFICATIONS	TASK DESCRIPTION	MAXIMUM RATE/HOUR
<p><u>Senior Professional Expert</u> Requires professional registration and twelve (12) years of environmental and managerial experience. Provides senior technical oversight, research, and review of highly complex assessment and remedial activities. Recommends needed changes to these activities that will increase the cost effectiveness and efficiency of the site.</p>	<ul style="list-style-type: none"> • Specialty Site Research • Reviews Complex Sites • Provide groundwater modeling evaluation 	\$150
<p><u>Senior Professional</u> Requires professional registration and eight (8) years of environmental and managerial experience. Serves as senior technical leader for environmental investigation or remediation projects of large scope of complexity and has developed substantial expertise in the field of practice. May supervise or direct the work activities of lower level professionals and technicians. Will perform very limited fieldwork, and have limited involvement in projects. Duties typically include senior review of reports, developing strategies, and attending client/regulatory agency meetings. Responsible for approving designs, reports, plans, and specifications before submittal to clients or regulatory agencies. Specialized education and experience may be substituted for the requirements of this classification at the discretion of the Department.</p>	<ul style="list-style-type: none"> • Program management • Project oversight • Reviews technical reports • Reviews TRAPs 	\$122
<p><u>Project Professional</u> Requires professional registration and four (4) years of environmental experience. Leads and supervises team of lower level personnel, but would have a limited number of hours charged to each site, and only a small percentage of total field hours. Generally supervises staff engineers/geologists, environmental scientists, and technicians and oversees several projects. May prepare proposals, environmental programs, and plan specifications for site remediation activity. Specialized education and experience may be substituted for the requirements of this classification at the discretion of the Department.</p>	<ul style="list-style-type: none"> • Project management • TRAP preparation • Review technical reports • Report preparation • Prepare proposals • Prepare permit applications 	\$100
<p><u>Staff Professional</u> Requires a bachelor of science degree in engineering or geology and two (2) years of environmental experience. Serves as manager for entire projects. Is responsible for gathering field data and is competent at data analysis. Must be able to conduct assessment and remedial activities. May write reports. This position will normally be highest in number of hours billed to project for field work and report preparation. Specialized education and experience may be substituted for the requirements of this classification at the discretion of the Department.</p>	<ul style="list-style-type: none"> • Project management • Data review and analysis • Report preparation • Field work preparation/planning • On site supervision of assessment activities • Remedial system installation • Prepare permit applications 	\$90
<p><u>Remediation System Technician</u> Requires high school diploma or GED and two (2) years of experience in the operation and maintenance of dual phase remediation systems. Experience and/or knowledge of other remediation systems, maintenance of pumps, electric switches, and other system components. Shows mechanical aptitude for troubleshooting system problems and making needed repairs. Attended a remediation system manufacturer's training course or received individual training from manufacturer's representative or a person already classified as a Remediation System Technician.</p>	<ul style="list-style-type: none"> • System O&M • System troubleshooting • System startup 	\$73
<p><u>Environmental Technician</u> Requires high school diploma or GED and sufficient experience to perform required tasks. Responsible for general supervision of system installation, system operation, and maintenance (O&M). Collects system effluent samples. Bails wells and collects soil and groundwater samples.</p>	<ul style="list-style-type: none"> • System O&M • Well development and sampling • Soil sampling • Waste handling • Remedial system installation • Free product removal • Monitoring • Surveying 	\$58
<p><u>CADD Operator/Draftsperson</u> Responsible for generating specialized drawings and maps utilizing Computer Aided Design.</p>	<ul style="list-style-type: none"> • Drafting • CAD/CADD work 	\$58
<p><u>Administrative/Clerical</u> Responsible for general office work, typing, filing, bookkeeping, administrative assistance, and word processing for technical reports.</p>	<ul style="list-style-type: none"> • Word Processing • Report generation • Document reproduction • Filing • Administrative assistance 	\$48

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2.2 OTHER DIRECT COSTS

The following items are illustrative of costs normally included in this category of costs.

2.2.1 TRAVEL (Applies to ERAC and Subcontractors)

Use Google Maps to calculate the mileage and time based on the fastest route required to travel from the ERAC's office to the specific site. For the ERAC, use the address listed on the most recent ERAC Application/Update Application, unless the proposal states that the personnel will be coming from another office requiring less time. To calculate the round trip mileage, multiply the miles required to travel one-way by two. To calculate the round trip time, multiply the time required to travel one-way by two, then round up to the next 15 minute interval.

Labor for travel will be reimbursed at actual reasonable travel time up to a maximum of 8 hours round trip for approved personnel. Travel time for activities is reimbursed for one person only, unless designated and approved otherwise.

The mileage will be reimbursed up to a maximum of 500 miles for a round trip.

2.2.2 EQUIPMENT

Billings for equipment must include equipment description, number of days utilized, rates per day/week/month, and total amount billed. These charges include all costs, including maintenance and incidentals required for maintenance of the equipment, and profit. No additional markup will be reimbursed. Maximum rates reimbursed for commonly used equipment are as set forth below:

ITEM	RATES ¹		
	Daily	Weekly	Monthly
Photoionization detector (PID, OVM,)	\$ 70	\$ 280	\$ 700
Flame ionization detector (FID, OVA)	70	280	700
Gasoline Vapor Monitors (RKI Eagle, Gas Tech)	25	100	220
Combustible Gas/Oxygen Indicator	20	80	200
pH/Conductivity meter	10	40	100
Survey equipment (inclusive ²)	35	100	220
5 kW Generator	50	200	500
Water level indicator	10	40	100
Oil/Water interface probe	25	100	220
Centrifugal pump (1-1 1/2" diameter)	10	40	100
Peristaltic pump	20	80	200
Submersible pump (4" diameter)	25	100	220
Submersible pump (2" diameter)	75	320	800
Datalogger (4 channel w/transducers)	400	1600	3200
Multi Parameter Meter	100	400	800
Teflon bailer	NR	NR	NR
Hand augur	NR	NR	NR
Tool kits	NR	NR	NR
OTT tape	NR	NR	NR
First-aid kit	NR	NR	NR
Fire extinguisher	NR	NR	NR

1. Equipment rental charges will be reimbursed only for days/weeks/months actually used. Time for equipment to be mobilized and demobilized will not be reimbursed. Shipping costs are included in itemized rental rates. Rates for equipment not included above must be approved before use in order to ensure full reimbursement.
2. Inclusive = all equipment, materials, supplies, etc. necessary for the performance of the task that requires this equipment.
3. NR = Not Reimbursable.

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Reproduction and Computer Services

<u>ITEM</u>	<u>RATES</u>
Copying	NR
CAD equipment	NR

2.2.3 SUBCONTRACTORS

All subcontractor invoices must be in detail describing the type and amount of work performed (see the attached sample format for invoices). Subcontractor as used herein includes, but is not limited to, laboratory, drilling company, surveyor, delivery company, construction company, etc.

2.2.3.1 DRILLING INVOICE

Must show actual units of work performed at unit charges previously submitted on the "Unit Rate Bid Sheet for Drilling Services" and accepted by MDEQ or usual and customary charges, *whichever is less*, subject to maximum limits (see Appendix C). Must include waste manifests, if applicable.

2.2.3.2 LABORATORY

Billings for laboratory services must include type and method of analysis, number of each, charge per analysis, and total amount charged. Maximum reimbursable rates for laboratory analyses (including disposal) are as set forth below:

<u>Analysis</u>	<u>Water</u>		<u>Soil</u>	
	<u>Method</u>	<u>Rate</u>	<u>Method</u>	<u>Rate</u>
Ammonia	EPA 350.1	\$ 20		
Biochemical Oxygen Demand Five Day (BOD ₅)	SM 507	25		
BTEX	EPA 8021B or EPA 8260B	50 60	EPA 8021B or EPA 8260B	\$ 50 60
BTEX with EnCore Sampler Method 5035			EPA 8021B or EPA 8260B	65 75
BTEX/1, 2 DCA	EPA 8260B	60		
Bulk Density				25
Chemical Oxygen Demand (COD)	EPA 410.4	25		
EDB	EPA 8011	80		
Hardness	SM 314	15		
Ignitability	EPA 1010 or EPA 1020	35	EPA 1010 or EPA 1030	35
Iron	EPA 6010	25		
Lead	EPA 7421	30	EPA 7421 or SM 304	30
Manganese	EPA 6010	15		
Oil & Grease	EPA 9070	35	EPA 9071A	35
pH	EPA 9040B	6	EPA 9045C	6
Polynuclear Aromatic Hydrocarbons (PAH)	EPA 8100 or EPA 8270C or EPA 8011	100 130 180	EPA 8100 or EPA 8270C	100 130
Porosity				120
Total Dissolved Solids	EPA 160.1	15		
Total Organic Carbon	EPA 9060	20	EPA 9060	35
Total Suspended Solids	EPA 160.2	15		
Water Content			EPA 160.3	15

Emergency Rush analysis (0 to 48 hour turnaround): Maximum reimbursable rate will be 2.0 times the above rate and must be necessary as determined by the MDEQ UST Branch.

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2.2.3.3 VACUUM TRUCK SERVICES

Must show actual units of work performed at unit charges in proposed scope of work and accepted by MDEQ or usual and customary charges, *whichever is less*, subject to maximum limits set below.

Vacuum Truck (operator & cleaning included)	\$115.00 per hour (vacuuming time+1 hour transition)
Transport	2.00 per mile (portal to portal), \$800 maximum
Disposal	0.40 per gallon (plus 10% markup if subcontracted)
Vacuum Truck Operator Motel Expenses and Meals	Hotel \$100.00 per night Meals \$46.00 per day when an overnight stay is <i>necessary</i> . When an overnight stay is <u>not</u> necessary, \$12.00 per day for lunch will be reimbursed when the field work plus travel time is six (6) or more hours when pre-approved by MDEQ.

2.2.3.4 GEOPROBE SERVICES

Must show actual units of work performed at unit charges previously submitted and accepted by MDEQ or usual and customary charges, *whichever is less*, subject to maximum limits (see Appendix D).

2.2.3.5 SOIL CUTTINGS DISPOSAL

Soil cuttings disposal, if performed by the ERAC, may be reimbursed at actual, reasonable, and pre-approved unit costs, as applicable. Costs include containers (roll-off boxes and drums) and disposal fees only. Costs for waste-handling equipment are included in the applicable unit rates listed in Appendix C, *Maximum Limits of Reimbursement For Drilling Services, January 1, 2011*. Reimbursement for soil cuttings disposal, if performed by a drilling contractor, may be on a unit cost basis not-to-exceed the rates listed in Appendix C, *Maximum Limits of Reimbursement For Drilling Services, January 1, 2011*.

Costs for soil disposal associated with geoprobe (or equivalent) services up to one-inch well installation are included in the not-to-exceed rates listed in Appendix D, *Maximum Limits of Reimbursement For Geoprobe (or Equivalent) Services*.

2.2.3.6 OTHER SUBCONTRACTS

For any other work, which the ERAC must subcontract, a copy of the subcontractor's invoice must be submitted in sufficient detail as to the work performed and/or equipment used. Vacuuming invoices must have a "Summary of Vacuuming Events" form and waste manifest attached. Groundwater remediation invoices must have a "Remediation System Downtime Summary" form attached (see Appendix E). Soil Excavation invoices must have a "Certification of Completion of Bid Contract" form attached. Monitoring well abandonment invoices must have a signed "Work Plan for Plugging Monitoring Wells" form attached.

2.2.4 MATERIALS AND SUPPLIES

Material billings must contain an itemized description for all individual items and their actual cost. Items with a cost of \$50.00 or more each must also have supplier receipts or invoices, and/or if from the ERAC's inventory, the ERAC must include an itemized material description showing: the name of the item; ERAC's actual cost per unit; quantity used; and, total amount billed for the item. Note: This does not apply to drilling which is normally billed on a unit price basis. Markup will be reimbursed on materials and supplies only when a supplier receipt or invoice is submitted.

Maximum rates reimbursed for commonly used materials/supplies are as set forth below:

Disposable Bailer	Actual up to \$10 each
Soil and Groundwater Sampling Supplies	Actual up to \$10 per boring/well (gloves, alconox, jars, string, rope, pumps, etc.)
Dual Phase Vacuum Extraction Oil/Filters	Up to \$100/month per liquid ring vacuum pump inclusive of all expendables

Materials and supplies should be invoiced at *cost not-to-exceed* the above rates.

2.2.5 AIRFARE

Airfare is not a reimbursable expense.

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2.2.6 MOTEL EXPENSES

Motel expenses are reimbursable only when a motel receipt is furnished. Motel expenses will be reimbursed at actual reasonable cost not-to-exceed \$100.00 per night plus applicable taxes and fees. It is the Tank Owner's responsibility to ensure that motel receipts are submitted with all requests for reimbursement; otherwise the reimbursement may be disallowed. A copy of the *actual motel receipt* is required, not a credit card receipt. Markup on motel expenses is allowed.

2.2.7 MEALS

When an overnight stay is *not* necessary, \$12.00 per day for lunch will be reimbursed when the field work plus travel time is six (6) or more hours when pre-approved by MDEQ. This applies even when an overnight stay is necessary on the day before. When an overnight stay is *necessary*, meals are reimbursed at actual cost not-to-exceed \$46.00 per day. A motel receipt shall be furnished. Meal receipts are not required. Markup on meals is allowed.

Example: When working Monday through Friday with overnight stays on Monday through Thursday, and working 4 hours on site Friday with 2 hours travel time back to the office, the following is allowed: 4 hotel nights, 4 days at \$46.00 for meals, and 1 day at \$12.00 for lunch.

2.2.8 TURNKEY REMEDIAL ACTION PLAN (TRAP)

Preparation of a TRAP may be reimbursed at actual cost not-to-exceed \$10,000.00 or at a lump sum amount no more than \$7,500.00. A pre-TRAP meeting requested by MDEQ may be reimbursed at \$2,000.00 maximum lump sum amount. All TRAP and pre-TRAP expenses shall be included in detail on the breakout sheet in the TRAP scope of work. TRAP preparation and pre-TRAP meeting expenses will be reimbursed after the system installation Trust Fund Approval has been issued. A project detail sheet/and or time sheets are required for the \$10,000.00 actual cost not-to-exceed TRAP preparation reimbursement.

2.2.9 LEASED REMEDIATION SYSTEMS

An invoice from the remediation system lease vendor reflecting the remediation system's monthly lease amount due for that month must be included in the monthly and tri-annual operations and maintenance reimbursement request.

2.2.10 REMEDIATION SYSTEM MONTHLY UTILITIES

Electrical, Water/Sewer Usage and Phone Services for Remediation Systems will be reimbursed at actual cost. A copy of all legible utility bills must be included in the monthly and tri-annual operations and maintenance reimbursement request. All utility bills must reflect the current dates of service.

2.2.11 OTHER

Other direct costs, if any, not included above should be documented in detail.

2.3 MARK-UP

The Department will reimburse the tank owner for an ERAC's markup on subcontracts, materials, supplies, hotel, and meals not to-exceed 10% on the first \$20,000.00 plus 5% for all such expenses beyond \$20,000.00. *Markup will be reimbursed on materials and supplies only when a supplier receipt or invoice is submitted.*

2.4 TAXES

In accordance with the state tax laws professional engineering services are exempt from Mississippi sales tax. Therefore, sales tax on professional engineering services will not be reimbursed. Taxes for non-professional services shall be reimbursed, as applicable, if included in the request for reimbursement. It shall be the tank owner and/or contractor's responsibility to include applicable taxes in the request for reimbursement. *Once the reimbursement is processed, no revisions to the request for reimbursement will be considered.*

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3.0 REIMBURSEMENT REQUESTS

Before submittal of a reimbursement request, the tank owner is required to verify that all the work was completed as previously approved, complete a certification affidavit, and submit the detailed invoices, where applicable, and certification affidavit to the address listed in Section 1.0.

A maximum of one reimbursement will be issued for each scope of work, unless otherwise pre-approved by MDEQ. Reimbursement will be processed only after the UST Project Manager has approved the final report, in writing. Once the reimbursement is processed, it is final and no revisions to the request for reimbursement will be considered. It is the responsibility of the tank owner and ERAC to ensure that the invoice included in the request for reimbursement is accurate, complete, and final. The tank owner has a *one year* time limit for submittal of the reimbursement requests from the written MDEQ due date for the final work product. Reimbursement requests submitted after this time limit will not be processed. An owner's or operator's reimbursement can be reduced by \$100 per calendar day for documents submitted to the MDEQ after a written deadline date established by the MDEQ. (sample formats for invoices are included in Appendix B)

3.1 FIXED-PRICE REIMBURSEMENT REQUESTS

When a proposal is approved by MDEQ on a fixed-price (lump sum) basis, MDEQ has established that the prices of items and/or service are set, not subject to adjustments, unless the proposal was not completed in its entirety or modifications to the work product were pre-approved by the UST project manager. The tank owner is required to verify that all work was completed and to provide the ERAC's invoice for the amount previously approved as long as the proposal was completed in its entirety. A completed work product includes work such as sampling all proposed monitoring wells if conditions allow, installing all proposed borings/monitoring wells, conducting all proposed site visits, and completing all tasks listed within the proposal.

Full reimbursement for fixed price approval is contingent upon completion of the entire proposal. If the work product does not include completion of each task listed within the proposal (i.e. proposal requested sampling 20 wells and only 15 wells were purged and sampled) or the work product does not include all tasks listed in the associated MDEQ UST guidance document or standard operating procedure (i.e. Standard Operating Procedures for Vacuuming Activities, Scope of Work for Groundwater Sampling, Preliminary Subsurface Investigation Guidance Document, Additional Subsurface Guidance Document, etc.), full reimbursement for the fixed price approval amount should not be requested. Reimbursement for uncompleted proposals or work not meeting minimum established specifications shall be subject to deductions as determined by appropriate MDEQ personnel.

On fixed price reimbursement requests the tank owner only needs to provide the ERAC's invoice for the amount previously approved, verify that all the work was completed as previously approved, complete the certification affidavit, as explained in Section 4.0, and submit the invoice and certification affidavit to the address listed in Section 1.0.

4.0 CERTIFICATION AFFIDAVIT

All requests for reimbursement must include the most recent MDEQ Certification Affidavit. Only the most current Certification Affidavit will be accepted.

All applicable blanks on the MDEQ Certification Affidavit must be completed. The tank owner or an authorized representative of the tank owner (which generally includes Principal or Financial Officer of a corporation) must sign the Certification Affidavit before a Notary Public. The ERAC cannot serve as an authorized representative. Affidavits not complete and/or containing incorrect invoice amounts or dates will be returned. A new complete Certification Affidavit will be required to process the reimbursement request.

AFFIDAVITS NOT COMPLETE AND CORRECT WILL BE RETURNED

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5.0 ERAC PENALTY POLICY

MDEQ has spent significant resources creating guidance documents for Environmental Response Action Contractors (ERAC) for the preparation of various proposals and reports requested by MDEQ Project Managers to ensure quality and consistent work products among the MDEQ approved ERACs. To promote compliance with MDEQ guidance documents and ensure quality and consistent work products among all the MDEQ approved ERACs, MDEQ may seek monetary penalties.

In accordance with 11 Miss. Admin. Code Pt. 5, Ch. 1, R.1.13.B, MDEQ can issue penalties to an ERAC for failure to meet performance standards such as, but not limited to, following an approved scope of work and submitting a complete and accurate report. The purpose of this guidance document is to ensure that penalties are substantial enough to deter noncompliance with performance standards and that MDEQ gives fair and equitable treatment to the MDEQ approved ERACs.

The penalty amounts that follow are for monetary penalties only and may be increased or decreased due to the seven factors of Mississippi Code §49-17-427 which include:

- The willfulness of the violation;
- Any damage to air, water, land, or other natural resources of the state or their uses;
- Costs of restoration and abatement;
- Economic benefit as a result of noncompliance;
- The seriousness of the violation;
- Past performance history; and
- Whether the noncompliance was discovered and reported as the result of a voluntary self-evaluation.

This guidance sets forth, in general terms, how MDEQ shall exercise its enforcement discretion and will normally be used by the MDEQ to determine penalties. The monetary penalty schedule established herein varies with the nature and severity of the violation(s). The violations listed below are not exhaustive and therefore do not include all possible violations.

Procedures for Penalty/Reduction in Reimbursement

When a penalty has been assessed for a violation, the ERAC will receive written notification through email correspondence sent to the primary contact for the ERAC summarizing the MDEQ penalty. If the ERAC disagrees that the associated violation(s) occurred, the ERAC will be responsible for contacting the MDEQ Project Manager within five (5) working days of written notification to discuss the violation(s).

If resolution cannot be agreed upon between the MDEQ Project Manager and the ERAC primary contact, then an Administrative Conference will be scheduled to further discuss the violation(s).

Assessment of penalties will either be accomplished through a Reduction in Reimbursement for ERACs receiving payment directly from MDEQ, or an Administrative Agreed Order for ERACs that are paid directly from the MDEQ tank owner.

When preparing proposals and reports, and performing field work, the ERAC shall abide by the most recent MDEQ/UST Branch Manual of Standard Operating Procedures (SOP) and the most recent MDEQ/UST Branch Guidance Documents as required.

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For all proposals (unless otherwise stated for specific proposal):

A.	Violation	Penalty Amount
1	Failure to submit a document to MDEQ by a written deadline established by MDEQ	\$100/calendar day
2	Failure of a Professional Engineer (PE) or Registered Professional Geologist (RPG) to review, sign, and/or stamp a Scope of Work/Cost Estimate (SOW/CE) proposal	\$100
3	Failure to provide all required sections from proposals as specified in the MDEQ Guidance Document Requirements	\$200/missing section
4	Submittal of incomplete/inaccurate required sections as specified in the MDEQ Guidance Document Requirements	\$100
5	Submittal of incomplete/inaccurate information in the body of the proposal	\$100
6	Failure to include all of the required QA/QC samples as specified in the SOP.	\$100
7	Failure to provide required Cost/Price Summary form	\$200/missing form
8	Submittal of incomplete/inaccurate Cost/Price Summary form	\$100/form
9	Failure to provide Detailed Breakdown Sheet	\$200/missing form
10	Submittal of incomplete/inaccurate Detailed Breakdown Sheet	\$100/sheet
11	Failure to provide subcontractor quote sheet	\$200
12	Submittal of incomplete/inaccurate subcontractor quote sheet	\$100
13	Failure to provide required map	\$100
14	Failure to provide two copies of the completed SOW/CE	\$100

For all reports (unless otherwise stated for specific report):

B.	Violation	Penalty Amount
1	Failure to contact MDEQ Project Manager during field activities as required in the MDEQ Standard Operating Procedure or guidance documents	\$200
2	Failure to submit a document to MDEQ by a written deadline established by MDEQ	\$100/calendar day
3	Failure of a Professional Engineer (PE) or Registered Professional Geologist (RPG) to review, sign, and/or stamp a report	\$100
4	Submittal of incomplete/inaccurate information in the body of the report	\$100
5	Failure to provide description/explanation of significant deviations from the approved SOW/CE	\$200
6	Failure to provide all required report sections as specified in the applicable MDEQ Guidance Document(s)	\$200/missing section
7	Submittal of incomplete/inaccurate required report sections as specified in the applicable MDEQ Guidance Document(s)	\$100
8	*Failure to wait for a well to recover to 75% of its original volume before collecting a groundwater sample (unless approved by the MDEQ Project Manager)	\$200
9	*Failure of soil samples to meet holding times	\$200
10	*Failure of groundwater samples to meet holding times	\$200
11	*Failure for the temperature of the samples to be 6°C or less	\$200
12	*Failure to collect trip blank, equipment blank, and/or duplicate samples during sampling activities when required by the SOP	\$200/missing sample
13	Failure to provide Chain of Custody and/or laboratory analysis data in a report	\$200
14	*Submittal of incomplete/inaccurate Chain of Custody	\$100

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15	*Failure to verify possession of samples at all times. Chain of Custody does not adequately track possession of samples from field collection to laboratory receipt	\$200
16	Failure to provide figures and tables as specified in the applicable MDEQ Guidance Document(s)	\$100/missing figure or table
17	Submittal of incomplete/inaccurate figures and tables as specified in the applicable MDEQ Guidance Document(s)	\$100/figure or table
18	Failure to provide specific recommendations as required	\$200
19	Failure to provide appendices as specified in the MDEQ Guidance Documents requirements	\$100/missing appendix
20	Submittal of unbound report as required in SOP	\$50
21	Failure to provide photos of work performed at the site as required	\$50
22	Failure of ERAC to abide by the SOP	\$50 – 500 per occurrence
23	Failure to calculate or state RPD for the duplicate sample	\$50
24	Failure to discuss an RPD above 25% for the duplicate sample	\$100
25	Failure to state which well the Duplicate Sample is a duplicate of	\$50
26	*Failure of the RPD to meet the 25% requirement for the duplicate sample	\$200
27	Failure to state the trip blank results	\$50
28	Failure to discuss any trip blank result above ND	\$100
29	*Failure of the trip blank to meet the ND requirement	\$200
30	Failure to state the equipment/rinse blank results	\$50
31	Failure to discuss any equipment/rinse blank result above ND	\$100
32	*Failure of the equipment/rinse blank to meet the ND requirement	\$200
33	Failure to submit the Monitoring Well Sampling Form	\$200
34	Submittal of incomplete/inaccurate Monitoring Well Sampling Form	\$100
35	*Failure of the groundwater to intersect the screened interval	\$100
36	Failure to adjust the groundwater elevation when free product is encountered	\$50
37	Failure to provide field notes, Offsite Access approval form, or Waste Manifests	\$100/missing item
38	Failure to provide all boring logs and monitoring well schematics	\$100/missing item

For all invoices:

C.	Violation	Penalty Amount
1	Failure to provide all subcontractor invoices as specified in MDEQ Reimbursement Procedures and Limitations	\$100/missing invoice
2	Missing, incomplete or incorrectly filled out Certification Affidavit	\$100
3	Failure to provide a complete Runtime/Downtime Summary clearly defining the actual runtime/downtime for the month	\$100
4	Failure to submit a Summary Invoice as specified in the Procedures and Limitations	\$100
5	Missing or improperly formatted Invoice Cost Breakout as specified in the Procedures and Limitations	\$100
6	Failure to provide invoices within 12 months of written MDEQ due date for the final work product	Total cost approved for SOW

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Additional violations based on specific MDEQ Guidance Documents:

PSI, LSI, and ASI SOWs:

D.	Violation	Penalty Amount
1	Failure to conduct site reconnaissance before preparing SOW which includes no site history/file review and/or no site visit (specific to PSI only)	\$300
2	Failure to propose boring locations in accordance with minimum requirements in PSI SOW guidance	\$100
3	Failure to propose groundwater well locations in accordance with minimum requirements in PSI SOW guidance	\$100
4	Failure to provide driller's unit rate bid sheet or equivalent	\$100

PSI, LSI, and ASI Reports:

E.	Violation	Penalty Amount
1	Failure to provide data table for soil borings and/or groundwater wells	\$200
2	Failure to provide laboratory data for soil and/or groundwater samples	\$100
3	Failure to provide recommendations discussing if additional assessment is necessary and/or free product recovery is necessary (if free product is present)	\$100
4	Failure to install borings/wells in accordance with MDEQ/UST Standard Operating Procedure Manual without MDEQ Project Manager approval	\$200 - \$1000
5	Failure to analyze the soil sample with the highest PID/FID reading	\$200
6	Failure to terminate the boring as stated in the SOP	\$200

Groundwater Sampling Reports:

F.	Violation	Penalty Amount
1	Failure to collect groundwater elevations from all monitoring wells listed in the scope of work	\$200
2	Failure to conduct all analyses required	\$300
3	Failure to collect groundwater samples from all monitoring wells listed in the scope of work (when there is sufficient water to collect a sample, and the well is clear of free product)	\$100/missing sample
4	Failure to discuss anomalies in the groundwater elevations, if applicable	\$200
5	Failure to discuss the trip blank, duplicate, and equipment blank samples meeting the quality control criteria	\$200

Vacuuming SOW:

G.	Violation	Penalty Amount
1	Failure to specify which wells will be vacuumed and/or duration of vacuuming per well	\$200
2	Failure to provide subcontractor quote for vacuuming services	\$200

Vacuuming Report:

H.	Violation	Penalty Amount
1	Failure to discuss anomalies noted, if applicable, during vacuuming events	\$200
2	Failure to collect free product thicknesses and/or groundwater elevations before and/or after each vacuuming event	\$100/event
3	Failure to provide all Summary of Vacuuming Event forms, all Product Thickness forms, and/or Waste Manifests	\$100/form
4	Failure to provide site map with the free product contour as required in the MDEQ Guidance Document	\$200

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5	Failure to provide the vacuum pump curve	\$100
6	Failure to collect VOC readings as specified in the approved SOW	\$200
7	Failure to contact MDEQ/UST project manager when free product shows up in another well, or when there is no free product present in wells	\$100

Vacuuming Invoices:

I.	Violation	Penalty Amount
1	Failure to provide Summary of Vacuum Event form, completed waste manifest form, ERAC's invoice, and/or vacuum truck service invoice	\$100/missing item

UST General Permit Application:

J.	Violation	Penalty Amount
1	Failure to provide contiguous landowner notification	\$100
2	Failure to provide POTW notification and/or approval documentation	\$200
3	Failure to complete the main application	\$200
4	Submittal of inaccurate information on the application	\$100

Turnkey SOW:

K.	Violation	Penalty Amount
1	Failure to provide the CCQS and narrative description to MDEQ project manager prior to requesting bids (Bid Documents)	\$300
2	Failure to provide written quotes for electrical hook-up, telephone, sewer tap, and water (if applicable). If there is no charge, then the quote should say so.	\$500
3	Failure to provide three CCQS with identical units (or documenting requests for 3 or more quotes)	\$500
4	Failure to provide monthly estimates for local water, telephone, electrical, and sewer utilities (estimate may be a lump sum for all utilities)	\$100-\$300
5	Failure to provide 2 manufacturer quotes for new remediation systems	\$500
6	Failure to provide the original system invoice for proposed used remediation system along with previous owner, previous locations of operation, previous amount of time the system operated, and any completed upgrade invoices.	\$500
7	Failure to provide process and instrumentation diagram (P&ID)	\$300
8	Failure to discuss anticipated extraction flow rate, anticipated hydraulic and pneumatic radius of influence, and/or anticipated wastewater effluent concentrations	\$300/missing discussion
9	Failure to list all permits, local codes/ordinances, and their requirements that must be met for system installation and operation	\$200
10	Failure to provide detailed discussion of trenching and piping, recovery well conversion and well installation, and system positioning and hookup	\$300/missing discussion

Remediation System Installation Report:

L.	Violation	Penalty Amount
1	Failure to provide an updated Operation and Maintenance Manual after installation of the remediation system	\$500
2	Failure to provide System Fact Sheet	\$300
3	Failure to describe field activities and/or all deviations from the approved work plan	\$200
4	Failure to provide a site map (to scale) indicating the system, piping, recovery well, and fence layout	\$200
5	Failure to provide the proposed quantities vs actual quantities installed table	\$300

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Triannual Remediation System Reports:

M.	Violation	Penalty Amount
1	Failure to collect groundwater elevation data and pneumatic readings at least one time per month	\$200/missing month
2	Failure to notify MDEQ Project Manager when free phase product is noted in a monitoring well which is not operating as a recovery well	\$200
3	Failure to make necessary adjustments to the remediation system in order to operate the remediation system (and recovery well configuration) in the most effective manner	\$200
4	Failure to record VOC concentration from system exhaust at least 3 times per month, if applicable	\$200/missing month
5	Failure to discuss cumulative VOC mass removal (pounds), hydraulic and/or pneumatic capture zone, duration of remediation with expected time to cleanup, and/or contaminant plume and changes in plume size	\$200/missing discussion
6	Failure to remove 50% or more of the free phase product recorded at start-up within the first 6 months of system operation (barring no new releases)	\$500
7	Failure to provide recommendations that include: <ul style="list-style-type: none"> • recovery of free phase product if product exists in wells other than operating recovery wells • changes to recovery wells or recovery well configuration • changes to system if not currently meeting optimal operating parameters 	\$300/missing discussion
8	Failure to provide accurate Remediation System Runtime Summaries	\$500
9	Failure to provide Executive Summary	\$200
10	Failure to provide drop tube depths	\$200
11	Failure to provide all O&M Sheets for all visits	\$100/missing sheet
12	Failure to adjust drop tubes or pumps, so that drop tube or pump is submerged in groundwater	\$200/occurrence

Remediation System Continuation SOW:

N.	Violation	Penalty Amount
1	Failure to provide a table with the previous year's data for the O&M visits and system cleaning events (include dates, times, and personnel)	\$300
2	Submittal of an incomplete/inaccurate table for the previous year's data	\$200
3	Failure to base the proposed hours for the continuation SOW/CE on the previous year's data	\$300
4	Failure to propose necessary changes to the remediation system	\$300
5	Failure to make changes to the number of wells sampled, if necessary	\$200

*For these items, consequences are listed in the SOP. These consequences may require redrilling or resampling, which would not be eligible for reimbursement.

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6.0 TANK OWNER APPEALS

If a tank owner feels that an error was made in the MDEQ UST Branch's determination of the amount of reimbursement, the tank owner may appeal the determination by following the below procedures.

6.1 REIMBURSEMENT DISAGREEMENTS

If the tank owner disagrees with the MDEQ UST Branch determination of the amount of reimbursement, the tank owner may submit a written appeal to the MDEQ UST Contracting Officer at the address given in Section 1.0 within twenty days of the issue date of the Notice of Reimbursement (NOR).

Upon receipt of the appeal, if received within the allotted time, the MDEQ UST Branch, based upon information provided in the appeal, will again review the request for reimbursement and provide a determination of amount of reimbursement to the tank owner and his ERAC with a Final Notice of Reimbursement (FNOR).

No provisions exist for the tank owner's ERAC to appeal MDEQ UST Branch determinations of amount of reimbursement whether for their own account or requested on behalf of the tank owner.

6.2 APPEALS TO THE COMMISSION ON ENVIRONMENTAL QUALITY (CEQ)

If the tank owner disagrees with the FNOR or fails to submit an appeal within the allotted time, the tank owner may submit an appeal to the CEQ. The appeal must be in writing from the tank owner and must specifically state the amount of the appeal and the Tank Owner's justification for the appeal. The appeal must be addressed to:

Commission on Environmental Quality
Attn: MDEQ Executive Director
Post Office Box 2261
Jackson, MS 39225-2261

6.3 APPEALS OF CEQ DECISIONS

Any tank owner aggrieved by any decision of the CEQ relating to determinations of amount of reimbursement shall have the right to appeal as provided in Section 49-17-41, Mississippi Code of 1972.

APPENDIX A



CERTIFICATION AFFIDAVIT

Site Name _____ MGPTF I.D. No. _____

Amount of this request \$ _____

I certify that this request for reimbursement of costs at the above referenced site is consistent with the provisions of the Mississippi Underground Storage Tank Act. I certify that all invoices, data, and documentation submitted as part of this request are a true and accurate representation of costs actually incurred as an integral part of the assessment and/or remediation of motor fuel contamination.

I, the tank owner, responsible party, or authorized representative warrant that I have not received any fee, commission, percentage, gift, or other consideration as a result of employment of a person, company, corporation, individual, or firm responsible for conducting site assessments, remediation, or any function thereof and further that I know of no offer or acceptance of any fee, commission, percentage, gifts, or other consideration as a result of employment of a person, company, corporation, individual, or firm responsible for conducting site assessments, remediation or any function thereof. I understand that any evidence or discovery of fraud or other misuse of payments received from the fund may result in referral to the Attorney General for appropriate action.

REIMBURSEMENT METHOD SELECTION

(Please complete the box with the reimbursement method of your choice)

I certify that the above amount requested for reimbursement represents a financial obligation that has been paid in full. As such, I request the approved amount be paid directly to the bank account previously indicated. Verifiable proof of payment is provided with this reimbursement request.

Typed or printed name of tank owner/responsible party or authorized representative	Signature
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I certify that the above amount requested for reimbursement represents a financial obligation that has not been paid. As such, I request the approved amount be paid directly to the Response Action Contractor.

Typed or printed name of tank owner/responsible party or authorized representative	Signature
---	-----------

Before me personally appeared _____, who executed the foregoing instrument and acknowledged to me and before me that said instrument was executed for the purposes therein expressed.

Witness my hand and official seal, this _____ day of _____ A.D. _____.

My commission expires _____

Notary Public

FOR OFFICIAL USE ONLY	
OFFICE OF POLLUTION CONTROL	
APPROVED FOR PAYMENT	
DIVISION #	_____
DATE:	_____
AMT. APPROVED:	_____
SIGNED:	_____

APPENDIX B

SAMPLE DOCUMENT FORMATS FOR ERAC'S TIME AND MATERIAL INVOICE SUBMITTAL

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Summary Invoice	Page 1
Invoice Detailed Breakout.....	Page 2
Backup Invoice for Drilling.....	Page 3
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Backup Receipts for Hotel and Shipping	Page 5
Monthly O&M Invoice Example.....	Page 6
Triannual O&M Invoice Example.....	Page 7

Fair Engineers, Inc.
100 First Avenue
Jackson, MS 39000
(601) 555-1234

January 15, 2017

Invoice #0001

Client: Gas, Inc.
123 Park Avenue
Natchez, MS 38000
(601) 555-6789

MGPTF I.D.#0000
Site Name: Bob's Service Station
Location: 88 57th Street
Natchez, MS 38000

Labor	\$ 5,852.00
Other Direct Costs	9,134.05
Markup	<u>868.85</u>
Total Amount Due This Invoice	\$15,854.90

Invoice Cost Breakout

Direct Labor:

<u>Name & Classification</u>	<u>Task & Date of Task</u>	<u>Hours</u>	<u>Rate</u>	<u>Extended</u>
<i>Field Hours:</i>				
Jane Joe, Staff Professional	Oversight 08/01/17 – 08/04/17	24	90.00	\$2,160.00
	Survey & Oversight 08/05/17	8	90.00	720.00
Bill Brown, Technician	GWS 08/15/17 – 08/17/17	<u>16</u>	58.00	<u>928.00</u>
		40		<u>\$3,808.00</u>
<i>Office Hours:</i>				
Billy Bill, Project Professional	Report Prep	2	100.00	\$ 200.00
Jane Joe, Staff Professional	Report Review	16	90.00	1,440.00
John Doe, CADD		2	58.00	116.00
Jane Doe, Clerical		<u>6</u>	48.00	<u>288.00</u>
		26		<u>\$ 2,044.00</u>
			Labor Total:	\$ 5,852.00

Other Direct Costs:

	<u>Units</u>	<u>Rate</u>	<u>Extended</u>
a. Travel			
(1) Transportation 360 miles	360	\$0.535/mi.	\$ 192.60
(2) Per diem			
i. Meals for 2 man-days (\$46 per day)			92.00
ii. Hotel for 2 nights (receipt attached)			<u>200.00</u>
		Travel Subtotal:	\$ 484.60
b. Equipment, Materials, Supplies			
Oil/Water Interface Probe	3 days	25/day	\$ 75.00
PID	1 day	70/day	70.00
Bailers	10	10/each	100.00
Ice			<u>8.00</u>
		Equipment Subtotal:	\$ 253.00
c. Subcontracts			
XYZ Analytical Services (invoice attached)			\$ 2,140.00
ABC Drilling Services (invoice attached)			<u>6163.20</u>
		Subcontract Subtotal:	\$ 8,303.20
d. Other			
Shipping (invoice attached)			\$ 93.25
		Other Subtotal:	\$ 93.25
		Other Direct Costs Total:	\$ 9,134.05
Markup (on meals, hotel, Subcontracts & Shipping)			\$ 868.85
		Total:	\$15,854.90

ABC Drilling Services
2 State Road
Natchez, MS 38000
(601) 555-5678

January 9, 2017

Invoice #0002

Site I.D. #0002

Site Name: Bob's Service Station, Natchez

Date of services: 1-2-17 to 1-4-17

<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
Mob. & Demobilization, Flat Fee	\$2.00/mi. x 10 miles	\$ 20.00 100.00
Decontamination	\$75/boring x 8 borings	600.00
Drill borehole with 6 1/4 inch I.D. hollow stem augurs and split spoon samples at 5' intervals, and borehole abandonment	\$15/foot x 80 feet	1,200.00
Installation of 4 inch schedule 40 PVC monitoring wells	\$36/foot x 80 feet	2,880.00
Well Development	\$100/well x 4 wells	400.00
Furnish and install flush- mount security casings	\$140/well x 4 wells	560.00
	SUBTOTAL:	\$5,760.00
	Sales Tax:	403.20
	TOTAL:	\$6,163.20

Billy Bill

Project Manager

Bo Driller

Driller

XYZ Analytical Services
12 Park Place
Jackson, MS 35000
(601) 555-0987

January 9, 2017

Invoice #0003

Client: Fair Engineers, Inc.

	<u>Units</u>	<u>Unit Price</u>	<u>Extended</u>
Soil Analyses:			
BTEX EPA Method 8020	8	\$ 45	\$ 360.00
PAH EPA Method 8100	8	100	800.00
Water Analyses:			
BTEX EPA Method 8020	7	40	280.00
PAH EPA Method 8100	7	100	<u>700.00</u>
		Total Amount Due:	\$2,140.00

Required Information on Shipping and Hotel Invoices

Express Shipping
Job Identifier

Date: August 29, 2017

Shipped From:
Shipped To:

Total \$93.25

Friendly Hotel
123 Fun Street
Jackson, MS
601-123-4567

Name of Occupant:

Date	Description	Charges
08/29/17	Rm: 222	\$100.00
08/29/17	Tax - Occupancy	2.00
08/29/17	Tax – Sales	7.00

Balance: \$109.00

Monthly O&M Invoice Example

Fair Engineers, Inc.
100 First Avenue
Jackson, MS 39000
601-555-1234

January 1, 2017

Invoice #00001

Client: Gas, Inc.
123 Park Avenue
Natchez, MS 38000
601-555-6789

MGPTF I.D.#00000
Site Name: Bob's Service Station
Location: 88 57th Street
Natchez, MS 38000

Monthly System Use Rate	\$5,000.00
Monthly Operation, Maintenance & Sampling	\$1,000.00
Electrical Power	\$3,000.00
Water/Sewer	\$ 500.00
Phone	\$ 50.00
Total Amount Due This Invoice	\$9,550.00

Triannual O&M Invoice Example

Fair Engineers, Inc.
100 First Avenue
Jackson, MS 39000
601-555-1234

January 1, 2017

Invoice #00001

Client: Gas, Inc.
123 Park Avenue
Natchez, MS 38000
601-555-6789

MGPTF I.D.#00000
Site Name: Bob's Service Station
Location: 88 57th Street
Natchez, MS 38000

Monthly System Use Rate	\$5,000.00
Triannual Operation, Maintenance & Sampling	\$1,000.00
Electrical Power	\$3,000.00
Water/Sewer	\$ 500.00
Phone	\$ 50.00
Laboratory Services	<u>\$2,000.00</u>
Total Amount Due This Invoice	\$11,550.00

APPENDIX C

**Maximum Limits of Reimbursement
For Drilling Services**
February 1, 2011

The maximum limits of reimbursement to the Tank Owner from the Mississippi Groundwater Protection Trust Fund for drilling services are listed below. Drilling must be performed in accordance with the attached "MDEQ Minimum Specifications for Drilling Services" dated July 1, 2005, and the scope of work approved by the MDEQ project manager. Charges for work not in accordance with the minimum specifications or not approved in the scope of work may not be reimbursed. The maximum limits of reimbursement listed below include *all charges, profit, and subsistence*. Any charges above the maximum limits listed below are not reimbursable. These limits apply to all projects performed after February 1, 2011.

1. MOBILIZATION AND DEMOBILIZATION

\$100.00 Flat Fee plus \$3.00/mile up to a total maximum charge of \$1,000. (only one mobilization and demobilization is reimbursable per phase of work)

Mobilization and Demobilization charges will be reimbursed on a charge/mile basis, plus flat fee, and will include the furnishing of all labor, equipment, materials and supplies, and any incidentals necessary to perform and complete the work properly. These charges should include any charges incidental to equipment set-up and removal. This item will also include the costs incurred by the driller with respect to time spent in obtaining and transporting any of the equipment and supplies required for the project to the site and from the site. Only one round trip will be reimbursed from the Mississippi Groundwater Protection Trust Fund (MGPTF) with distances determined by the official Mississippi State Highway map or as determined by the MDEQ contracting officer or his designee.

2. DECONTAMINATION

\$75.00/boring

Reimbursement for this item shall include all charges for materials and equipment including steam cleaners, generators, and tank/water trucks.

3. DRILLING BOREHOLE AND ABANDONMENT

\$18.00/foot

Reimbursement for this item will be based upon actual number of linear feet drilled (augured) as documented by the ERAC's field geologist or engineer and includes all labor, materials, soil/waste handling, split-spoon sampling at five foot intervals, and equipment including jackhammers, air compressors, and hand augers.

4. DRILLING BOREHOLE AND ABANDONMENT (Including soil disposal)

\$20.00/foot

Reimbursement for this item will be based upon actual number of linear feet drilled (augured) as documented by the ERAC's field geologist or engineer and includes all labor, materials, soil/waste handling, soil disposal, split-spoon sampling at five foot intervals, and equipment including jackhammers, air compressors, and hand augers.

5. ADDITIONAL SAMPLES

\$15.00/additional sample

Reimbursement for this item will be based upon actual number of additional samples collected as documented by the ERAC's field geologist or engineer and includes all labor, soil disposal, equipment, and materials.

6. BORING AND 2" WELL INSTALLATION \$34.00/foot
The charges associated with installing the monitoring wells shall include drilling to the required depth, split-spoon sampling at five foot intervals, soil/waste handling, PVC casing (schedule 40 or better), screen, bottom plugs, locking well caps, labor, sand, bentonite, grout, cement, and all equipment including jackhammers, air compressors, and hand augers.

7. BORING AND 2" WELL INSTALLATION \$37.00/foot
(Including soil disposal)
The charges associated with installing the monitoring wells shall include drilling to the required depth, split-spoon sampling at five foot intervals, soil/waste handling, soil disposal, PVC casing (schedule 40 or better), screen, bottom plugs, locking well caps, labor, sand, bentonite, grout, cement, and all equipment including jackhammers, air compressors, and hand augers.

8. BORING AND 4" WELL INSTALLATION \$40.00/foot
The charges associated with installing the monitoring wells shall include drilling to the required depth, split-spoon sampling at five foot intervals, soil/waste handling, PVC casing (schedule 40 or better), screen, bottom plugs, locking well caps, labor, sand, bentonite, grout, cement, and all equipment including jackhammers, air compressors, and hand augers.

9. BORING AND 4" WELL INSTALLATION \$44.00/foot
(Including soil disposal)
The charges associated with installing the monitoring wells shall include drilling to the required depth, split-spoon sampling at five foot intervals, soil/waste handling, soil disposal, PVC casing (schedule 40 or better), screen, bottom plugs, locking well caps, labor, sand, bentonite, grout, cement, and all equipment including jackhammers, air compressors, and hand augers.

10. BORING AND 6" WELL INSTALLATION \$48.00/foot
The charges associated with installing the monitoring wells shall include drilling to the required depth, split-spoon sampling at five foot intervals, soil/waste handling, PVC casing (schedule 40 or better), screen, bottom plugs, locking well caps, labor, sand, bentonite, grout, cement, and all equipment including jackhammers, air compressors, and hand augers.

11. BORING AND 6" WELL INSTALLATION \$52.00/foot
(Including soil disposal)
The charges associated with installing the monitoring wells shall include drilling to the required depth, split-spoon sampling at five foot intervals, soil/waste handling, soil disposal, PVC casing (schedule 40 or better), screen, bottom plugs, locking well caps, labor, sand, bentonite, grout, cement, and all equipment including jackhammers, air compressors, and hand augers.

12. WELL DEVELOPMENT \$100.00/well
This item shall include all charges for labor, equipment, water disposal, and product disposal.

13. FLUSH MOUNT SECURITY CASINGS \$175.00/each
This item shall include all charges for labor, equipment, and materials.

Notes:

1. Only the above items, not to exceed the above maximum unit rates, are reimbursable for drilling services.
2. Up to an additional \$2.00/ft may be allowed for borings and monitoring wells over 50 feet.
3. Footage for well installation is the actual number of feet from the top of the well casing to the bottom plug.

**Mississippi Department of Environmental Quality
Minimum Specifications for Drilling Services**

ITEM 1 - MOBILIZATION AND DEMOBILIZATION

The driller should leave the site as clean as when he arrived which includes soil disposal, if necessary.

ITEM 2 - DECONTAMINATION

Prior to mobilization any part of the drill rig and/or equipment that comes in contact with the borehole will be thoroughly cleaned to remove all oil, grease, mud, tar, etc. This cleaning process will consist of scrubbing the equipment with a detergent and tap water then using a high-pressure hot water rinse.

Before drilling each boring, the augers, drilling bits, etc. shall be cleaned by at least using a high-pressure hot water rinse. Special attention should be given to the threaded section of the casing. Petroleum based lubricants shall not be used to prevent binding.

Before taking Shelby tube or split-spoon samples, this and associated equipment shall be minimally decontaminated using the following protocol:

- (1) Cleaned thoroughly with detergent and tap water,
- (2) Rinsed thoroughly with isopropyl alcohol or methanol, and
- (3) Then rinsed thoroughly with distilled water.

ITEMS 3, 4, AND 5 - DRILLING OF BOREHOLES, SPLIT-SPOON SAMPLING, AND ABANDONMENT

Subsurface samples will be collected at five-foot intervals with a cleaned split-spoon or equivalent. Sampling will be carried out to the required depth while using standard ASTM protocols to recover the samples. Borehole abandonment will require grouting by the tremie method (95% Portland cement and 5% bentonite by weight) to begin at the bottom of the boring and proceeds to land surface. The patch at the land surface shall be the same material surrounding the borehole (i.e. asphalt, concrete, etc.).

ITEMS 6, 7, 8, 9, 10, AND 11 - INSTALLATION OF MONITORING WELLS

All monitoring wells shall be at least PVC schedule 40 with 0.010-inch factory slotted screen openings and drilled using hollow stem/Sonic drilling technology. Each screen will be continuously slotted and at least 10 foot in length. The well will consist of a least a schedule 40 (ASTM) body with threaded flush joints. No solvents or lubricating compounds will be used to aid pipe connection. PVC plugs will be threaded onto the bottom of each well screen to prevent the intrusion of filter material. The driller will place the threaded caps onto the well pipe opening at the surface. The well caps shall be watertight and lockable. If the wells are to be less than/greater than standard 4" inside diameter, prior approval from the MDEQ must be granted *before* the wells are installed.

The annular space between the monitoring well and the borehole wall shall be at least 2.0 inches and will be backfilled with a clean medium to coarse grain sand (20/40 sand) to a level approximately 1.0 foot above the top of the screen.

A two-foot bentonite seal of bentonite pellets will be placed immediately above the sand and firmly tamped in place.

The remainder of the annular space should be grouted to land surface with a grout mixture (95% Portland cement and 5% bentonite by weight) to approximately land surface.

ITEM 12 - WELL DEVELOPMENT

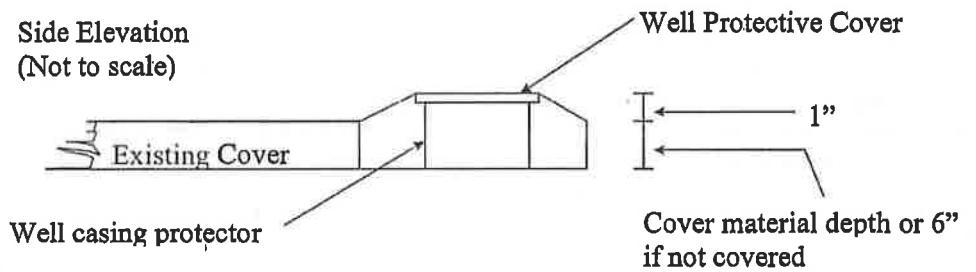
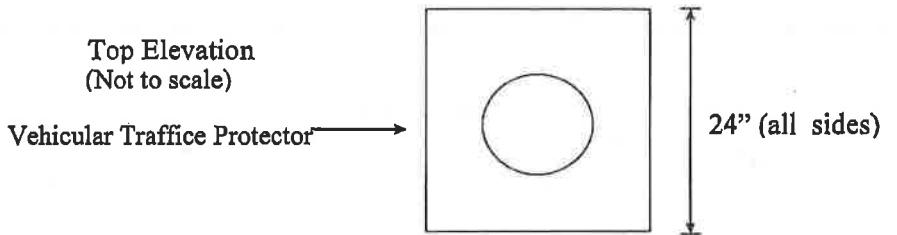
Upon completion of the monitoring well installation, the well should be developed by bailing, pumping, surge block, etc. At least three to five well volumes should be pumped or the well should be pumped dry. The final water from the well should not be turbid. The ERAC's field geologist or engineer shall determine the decision as to when the well is properly developed.

ITEM 13 - FABRICATION/INSTALLATION OF MONITOR WELL HEAD PROTECTION

In most cases the site will utilize concrete or asphalt as a covering material. Before installation of monitor well head protection, the engineer shall review the attached drawing to assure proper excavation prior to the pouring of concrete, which forms the vehicular traffic protector. If the location of the monitor well is within a covered area (asphalt or concrete), the existing surface about the monitor well must be removed utilizing either mechanical sawing or pneumatic hammer equipment to a depth of existing cover and the width and length as specified on the drawing. Loose materials on the exposed earthen surface shall be removed or compacted to assure a smooth surface upon which to pour the concrete mixture. If the monitor well is to be located outside a covered area, the earthen material should be removed using a shovel or pickaxe to a depth of six inches and a width and length as specified on the attached drawing. The monitor well should then be cut to the proper height so that the security casing cover will extend 2 inches above the well casing considering the requirements as outlined in the attached drawing and the security casing set.

The concrete mixture to be used as the vehicular traffic protector shall consist of the addition of five (5) pounds of Portland cement to each 80-pound bag of "Quickcrete" or other commercially available brand concrete mixture when the poured material is to be derived from bagged dry mix. Water should be added to the mixture in an amount necessary for desired consistency before the concrete is poured. If the poured material is to be delivered from a concrete supplier by truck, 2500 psi concrete should be specified. The concrete surface of the protector should then be trialed so that the surface of the concrete on any side of the security casing is flush with the monitor well security casing well cap and mating cover material. A flush mounted protective cover should be installed on the well casing protector to protect the monitoring wells against damage from site activities. The words "Monitoring Well" or a similar designation should be *embossed* on the protective cap.

MONITORING WELLHEAD PROTECTION



APPENDIX D

**Maximum Limits of Reimbursement
For
Geoprobe (or Equivalent) Services**

The maximum limits of reimbursement to the Tank Owner from the Mississippi Groundwater Protection Trust Fund for Geoprobe (or equivalent) services are listed below. The maximum limits of reimbursement listed below include *all charges, profit, and subsistence*. Any charges above the maximum limits listed below are not reimbursable. These limits apply to all projects performed after January 1, 2009 (limited to the approved cost ceiling).

1. MOBILIZATION AND DEMOBILIZATION

\$2.00/mile up to a total maximum charge of \$800.00 (only one mobilization and demobilization is reimbursable per phase of work)

Mobilization and Demobilization charges will be reimbursed on a charge/mile basis and will include the furnishing of all labor, equipment, materials and supplies, and any incidentals necessary to perform and complete the work properly. These charges should include any charges incidental to equipment set-up and removal. This item will also include the costs incurred by the driller with respect to time spent in obtaining and transporting any of the equipment and supplies required for the project to the site and from the site. Only one round trip will be reimbursed from the Mississippi Groundwater Protection Trust Fund (MGPTF) with distances determined by the official Mississippi State Highway map or as determined by the MDEQ contracting officer or his designee.

2. BOREHOLE

\$12.00/foot

Reimbursement for this item will be based upon actual number of linear feet probed, as documented by the ERAC's field geologist or engineer, and includes all labor, materials, soil disposal, continuous soil sampling, grouting, decontamination, and all equipment.

3. BOREHOLE AND 0.5" OR 1.0" WELL INSTALLATION

\$18.00/foot

The charges associated with installing the monitoring wells shall include probing to the required depth, continuous soil sampling, soil disposal, decontamination, and all equipment.

4. WELL DEVELOPMENT

\$35.00/well

This item shall include all charges for labor, equipment, water disposal, and product disposal.

5. FLUSH MOUNT SECURITY CASINGS

\$125.00/each

This item shall include all charges for labor, equipment, and materials.

*ONLY THE ABOVE ITEMS, NOT TO EXCEED THE ABOVE MAXIMUM UNIT RATES,
ARE REIMBURSABLE FOR GEOPROBE (OR EQUIVALENT) SERVICES.*

APPENDIX E

Remediation System Downtime Summary

Site Name:			Year:			Facility I.D. #						
	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec
1												
2												
3												
4												
5												
6												
7												
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25												
26												
27												
28												
29												
30												
31												
Total Monthly Hours												
Total Monthly Downtime Hours												

Effective: October 1, 1999

All system downtime must be recorded on this form. The following guidelines must be followed:

1. The runtime for the month starts and ends at 12:00 a.m. (i.e. 12:00 a.m. March 1 through 12:00 a.m. March 31 is the monthly runtime for the month).
2. The total amount of downtime for each day must be recorded in hours under the appropriate day of each month. *Please leave the day field blank if no downtime is recorded for that day/month.*
3. All consecutive downtime greater than 10 days must be reported to the OPC project manager within 24 hours of the 10th consecutive day of downtime. The notification can be by e-mail or fax. *Failure to notify the project manager within 24 hours of its discovery can result in a \$100.00 per day reduction in reimbursement to the owner until the notification is received.*
4. This form must be included with monthly invoices for system rental. Reimbursement requests will not be processed for monthly invoices without this form completed for the calendar month.
5. The triannual reports will be considered incomplete if this form is not received with each triannual report. The reimbursement to the owner will be *reduced by \$100.00 per calendar day for each day (after the due date) until we receive the form in the triannual report.*
6. One-thirtieth (1/30) of the monthly system use rate shall be deducted from reimbursement for each day (24 hour day rounded to the nearest whole day) of downtime when total downtime for the calendar month equals or exceeds 120 hours. No reduction in reimbursement will occur if the system is down for less than 120 hours. Costs related to system repairs or alterations, due to system malfunction or noncompliance with permits, are not reimbursable.

EXAMPLE FORM:

Remediation System Downtime Summary												
Site Name: ABC Station			Year: 2002			Facility I.D. # 1234						
	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec
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3												
4												
5												
6												
7	13											
8	24											
9	24											
10	24		4									
11	15		24									
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14		24	8									
15		24										
16		3										
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18	3											
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23			24									
24			24									
25	4		9									
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28												
29												
30												
31												
Total Monthly Hours	744	672	744									
Total Monthly Downtime Hours	119	69	178									

MISSISSIPPI UNDERGROUND STORAGE TANK BRANCH

Remediation System Downtime Summary

(Two Pump System)

Site Name:		Year:		Facility I.D. #								
	January		February		March		April		May		June	
	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2
1												
2												
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Total Monthly Hours												
Total Monthly Downtime Hours												

MISSISSIPPI UNDERGROUND STORAGE TANK BRANCH

Remediation System Downtime Summary

(Two Pump System)

Site Name:		Year:		Facility I.D. #								
	July		August		September		October		November		December	
	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2	LRV1	LRV2
1												
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Total Monthly Hours												
Total Monthly Downtime Hours												