

**Camp Minden M6 Destruction  
June 17, 2015**



(Quotes Received March 18, 2015)

**1. CONTRACT**

Be it known, that effective upon approval by the Director of State Procurement, as evidenced by the Director's signature on this document, the Louisiana Military Department (hereinafter sometimes referred to as "State") and William T. Poe & Associates, Incorporate, dba Explosive Service International, 9985 Baringer Foreman Road, Baton Rouge, Louisiana 70809, (hereinafter sometimes referred to as "Contractor") do hereby enter into contract under the following terms and conditions.

**2. SCOPE OF SERVICE (SOS)**

Contractor hereby agrees to furnish the following services:

Conduct removal, destruction, and site remediation actions of the following materials currently stored at the Camp Minden Site to include: 1) approximately 15,687,247 pounds of M6 propellant; and 2) approximately 320,890 pounds of Clean Burning Igniter. Contractor shall include all labor, materials, equipment, utilities, permits, licenses, participation in community involvement and associated actions to complete the Work. The quantities listed are estimates and actual amounts will not be known until the material is removed and weighed as it is destroyed. The Camp Minden Site will be available for the Contractor to work twenty-four (24) hours, seven (7) days a week.

Contract Documents:

- Attachment A ESI's Alternate Technology to Open Burn Quote dated March 18, 2015
- Attachment B-1 April 9, 2015 Request for Clarification and ESI Response dated April 10, 2015
- Attachment B-2 April 30, 2015 Request for Clarification and ESI Response dated May 4, 2015
- Attachment B-3 May 21, 2015 and May 28, 2015 Request for Clarifications and ESI Amended Response dated June 1, 2015
- Attachment B-4 June 8, 2015 Request for Clarification and ESI Response dated June 15, 2015
- Attachment C (intentionally left blank)
- Attachment D Deliverables
- Attachment E Environmental Protection Agency's (EPA) June 8, 2015 Final Determination for these Applicable, Relevant, and Appropriate Requirements (ARARS) for the Camp Minden Superfund Removal Site (Site) and attached Environmental and Compliance Considerations
- Attachment F Detailed Scope of Services
- Attachment G Certification and Disclosure Form
- Attachment H E-verify
- Attachment I Insurance
- Attachment J Definitions

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**-Attachment K Hazardous Materials Inventory (estimated quantities by location)  
-Attachment L ESI Schedule of Values dated June 15, 2015**  
are all hereby made a part of this Contract to the same extent as if incorporated herein in full.

### **3. CONTRACT MODIFICATIONS**

No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required by law. The State reserves the right to modify the total compensation for the removal and destruction of hazardous materials identified in the contract based on actual, verified quantities of materials removed and disposed and contingent upon receipt of funding by the State from the US. Treasury under the procedures of the Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") effective November 4, 2014, and/or any modifications to the AOC. Any adjustment to the Contract for the reason stated in this paragraph will be based on the per / pound cost data provided in the Contractor's quote. No oral understanding or agreement not incorporated in the contract will be binding on any of the parties.

Changes to the contract include any change in a) compensation; b) beginning/ending date of the contract; c) scope of work; and/or d) contractor change through the assignment of contract process. Any such changes, once approved, will result in the issuance of an amendment to the contract.

### **4. FUND USE**

Contractor agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

### **5. HEADINGS**

Descriptive headings in this contract are for convenience only and shall not affect the construction of this contract or meaning of contractual language.

### **6. PAYMENT TERMS**

The Contractor may invoice the State not more often than every 21 days or as approved by the Project Coordinator. Contractor will provide a Schedule of Values with each invoice request. Invoice request shall be in the format of an Application & Certification for payment AIA

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Document G702 and Continuation sheet AIA G703. Payments will be made by the State within approximately thirty (30) days after receipt of a properly executed invoice, and approval by the State Project Coordinator and the State, which approval shall not be unreasonably withheld. Invoices shall include the contract number, be addressed to the State, give a detailed explanation or product in the form of a percentage of sub-task, overall project Phase completion status, and detailed unit price information. Material removal and destruction billing will be based on a per pound (lb) basis of actual, verified quantities of materials removed and disposed of by the Contractor. Contractor shall be responsible for recording the actual net weight of M6 and CBI disposed of. Invoices submitted without the referenced documentation will not be approved for payment until the required information is provided. Invoices shall be sent to:

Camp Minden

Attention: Colonel Stuckey-Project Coordinator (Hazardous Materials Removal and Destruction)  
100 Louisiana Boulevard

Minden, Louisiana 71055

Project Phase are as follows:

Phase 1 - (Mobilization and Site Preparation)

Phase 2 - (Removal and Destruction Operations)

Phase 3 - (Site Restoration and Demobilization)

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Phase 1 & 3 invoice pricing will be based on the evaluation of sub-tasks for each Phase as identified by the Contractor, submitted in accordance with payment terms and Schedule of Values as approved by the Project Coordinator.

Electronic Funds Transfer (EFT) is a method of payment provided the Contractor properly establishes this process and provides notice to the Project Coordinator.

## **7. LATE PAYMENTS**

Due to the nature of the federal funds involved, interest due by the State Agency for late payments under La. R.S. 39:1695 and 13:4202 shall not apply.

## **8. DELIVERABLES**

Contractor will be required to perform this contract and provide the State with deliverables (*in accordance with the Deliverables – Attachment D, and accepted additive options*) of this contract in whole or part up to the current contract value.

## **9. TAXES**

Contractor agrees that all applicable taxes are included in the schedule pricing. State agencies are exempt from all state and local sales and use taxes, and where applicable, will provide documents to support contractor exemption claims.

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**10. COMPENSATION TO BE PAID TO THE CONTRACTOR:**

The State will, and Contractor agrees, to award this contract in parts. The State will pay and the Contractor will accept \$19,292,648.13 in consideration for the performance of the contract. The contract work and scope of services are based on mutually agreed upon execution in whole or part of deliverables, acceptance of additive options, and other defined terms and conditions required in this contract. The Parties reserve the right to amend the contract award for the full value of the Contractor's quote and any and all additives to execute all requirements and conditions for removal action at the prices included in this contract. Contractor agrees to extend the original quote and any/all clarifications and responses and additive pricing without any increase during the term of this agreement.

The Contractor fully understands and agrees that it will not receive any funds in excess of \$19,292,648.13 million unless the State receives additional funding from the U.S. Treasury under the Settlement Agreement. In furtherance thereof, Contractor will not be required to perform more than \$19,292,648.13 of work based on this Contract unless, and only to the extent, the State receives additional funding from the U.S. Treasury under the Settlement Agreement and this Contract is amended consistent therewith.

The ability of the Parties to amend the contract award for the full value of the Contractor's quote and additive pricing or to cover the cost of disposing of M6 Propellant over 15,687,247 pounds or Clean Burning Igniter over 320,890 pounds will be contingent upon receipt of funding by the State from the U.S. Treasury under the procedures of the Settlement Agreement.

**11. TERMINATION OF THIS CONTRACT FOR CAUSE**

The State may terminate this contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to this contract, provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this Contract, provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

**12. TERMINATION OF THIS CONTRACT FOR CONVENIENCE**

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The State may terminate this Contract at any time by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

The Contractor shall be entitled to payment for all work and equipment in progress, and deliverables in progress or completed, including equipment, materials and deliverables off site, to the extent costs and fees have been paid or incurred by the Contractor in accordance with this Contract and performed satisfactorily.

**13. TERMINATION FOR NON-APPROPRIATION OF FUNDS**

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

**14. TERMINATION DUE TO EPA WORK TAKEOVER**

In the event EPA issues a Work Takeover Notice, as provided in the Settlement Agreement, all work of the Contractor shall cease. The State shall terminate the contract on the date of the Work Takeover Notice without thirty (30) days notice. In such event, Contractor shall be entitled to the same payment and remedies as are available under paragraph 12, together with all other remedies available at law or in equity.

**15. USE OF AGENCY'S FACILITIES**

Any property of the State furnished to the Contractor shall, unless otherwise provided herein, or approved by the State and/or Agency, be used only for the performance of this contract.

The Contractor shall be responsible for any loss or damage to property of the State and/or State Agency which results from willful misconduct or lack of good faith on the part of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the State and/or State Agency in like condition, except for normal wear and tear, to that in which it was furnished to the Contractor, except that, in the event that the Contract is terminated under paragraphs 12 or 14 before site restoration takes place, Contractor and State will negotiate site restoration based on the quote and contract terms and availability of funds. Upon the happening of loss, or destruction of, or damage to property of the State, the Contractor shall notify the State thereof and shall take all reasonable steps to protect that property from further damage.

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The Contractor shall surrender to the State and/or State Agency all property of the State and/or State Agency prior to settlement upon completion, termination, or cancellation of this contract. However, should termination occur under paragraphs 12 or 14, Contractor shall have the right to keep its equipment and personnel at the site for a reasonable time not to exceed ninety (90) days after the effective date of such termination for the purposes of site restoration based on the terms negotiated as aforesaid, and the clearing of the site. All references to the Contractor under this section shall include any of its employees, agents, or subcontractors.

**16. RETAINAGE**

Five percent (5%) of work invoicing for progress payments shall be withheld from each pay request as retainage. The retainage shall not be due the Contractor until the State issues the Contractor a Final Acceptance, except where stated herein. At such time as the contained burn chamber has been delivered, installed, successfully tested, placed into operation, and operated successfully for thirty (30) days, the State shall release the retainage accrued through that time upon presentation of a Clerk certified clear lien showing that there are no mortgages, liens or judgments encumbering the burn chamber on file with the Louisiana Secretary of State or the Bossier Parish Clerk of Court. All subsequent retainage shall not be due the Contractor until the State issues the Contractor a Final Acceptance.

**17. WAIVER**

Waiver of any breach of any term or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by the written consent of all parties.

**18. WARRANTIES**

Contractor warrants that all services shall be performed in good faith, with diligence and care, by experienced and qualified personnel in a professional, workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.

**19. INDEMNIFICATION AND LIMITATION OF LIABILITY**

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of

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every name and description relating to personal injury and damage to real or personal tangible property to the extent caused by Contractor, its agents, employees, partners or subcontractors in the performance of the contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) State's unauthorized modification or alteration of a Product, Material, or Service; (ii) State's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Contractor; (iii) State's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the State's exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract. Any injunction that is issued against the State which prevents the State from utilizing the Contractor's product in excess of six (6) months and for which the contractor has not obtained for the State or provided to the State one of the alternatives set forth in the foregoing sentence is cause for the State to terminate the Contract. In the event of such termination, the State will not be obligated to compensate the Contractor for any costs incurred by the Contractor.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for products, materials, or services rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein

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mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings, except as otherwise provided in this Contract.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

## **20. INSURANCE**

Contractor will be required to provide the State of Louisiana with Certificates of adequate insurance indicating coverage required, *(in accordance with – Attachment I)*.

## **21. SUBCONTRACTOR INSURANCE**

Contractor shall include all subcontractors as insureds under its commercial general liability and project specific pollution liability policies, or shall insure that all subcontractors satisfy the same commercial general liability and project specific pollution liability insurance requirements stated herein for the Contractor. This language will supersede the Minor Sub-Contractor Insurance Requirement language in the response to clarification #4.

## **22. PERFORMANCE BOND**

Contractor shall provide a Performance Bond (Surety Bond) in the amount of \$19,292,648.13 and provide evidence of the ability to secure a bond for the amount of \$28,062,384, to insure the successful performance under the terms and conditions of the Contract. The original Performance Bond of \$19,292,648.13 is to be increased to cover any additions or amendments to the contract, but in no event to exceed \$28,062,384. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this

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Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

**The performance bond is to be provided within 15 working days from request. Failure to provide within the time specified may cause your offer to be rejected.**

**In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.**

The State reserves the right at any time to decrease the required performance bond amount if it determines that such decrease is in the best interest of the State.

### **23. LICENSES AND PERMITS**

Contractor shall identify, secure, and maintain all licenses, permits, approvals, and pay inspection fees required to do the work to complete this contract in compliance with all state and federal regulatory requirements.

### **24. SEVERABILITY**

If any term or condition of this contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this contract are declared severable.

### **25. SUBCONTRACTORS**

The Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or State Agency for any breach in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work.

### **26. SUBSTITUTION OF PERSONNEL**

If, during the term of this contract, the Contractor or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to the State, and potentially to state and federal regulatory agencies, for approval prior to any personnel

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substitution. It shall be acknowledged by the Contractor that every reasonable attempt shall be made to assign the personnel listed in the Contractor's quote.

**27. ASSIGNMENT**

Contractor shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

**28. CODE OF ETHICS**

The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) may apply to the Contracting Party in the performance of services called for in this contract. The contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

**29. CONFIDENTIALITY**

The following provision will apply unless the State agency statement of work specifically indicates that all information exchanged will be non-confidential:

All financial, statistical, personal, technical and other data and information relating to the State's operations which are designated confidential by the State and made available to the Contractor in order to carry out this contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the contract, or is rightfully obtained from third parties.

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**30. CONTRACT CONTROVERSIES**

Any claim or controversy arising out of this contract shall be resolved by the provisions of Louisiana Revised Statute 39:1673.

**31. RECORD OWNERSHIP**

All records, reports, documents, or other materials related to this Contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of the State and shall, upon request, or as directed, be returned by Contractor to the State, at Contractor's expense, at termination or expiration of the Contract. Contractor shall be entitled to keep copies of all of same. All accounting, financial, tax, and business records relating to the contract shall be the property of the contractor.

**32. RIGHT TO AUDIT**

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of ten (10) years after project acceptance or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

**33. CONTRACTOR'S COOPERATION**

The Contractor has the duty to fully cooperate with the State and provide any and all requested information, documentation, etc, to the State when requested. This applies even if this Contract is terminated and/or a lawsuit is filed. Specifically, the Contractor shall not limit or impede the State's right to audit or to withhold State owned documents.

**34. COMMISSIONER'S STATEMENTS**

Statements, acts, and omissions made by or on behalf of the Commissioner of Administration regarding the quote or quote process, this Contract, any Contractor and/or any subcontractor of the Contractor shall not be deemed a conflict of interest when the Commissioner is discharging her duties and responsibilities under law, including, but not limited to, the Commissioner of Administration's authority in procurement matters.

**35. SECURITY**

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Contractor's personnel will comply with all security regulations in effect at the State's premises, and externally for materials and property belonging to the State or to the project. Where special security precautions are warranted (e.g., correctional facilities), the State shall provide such procedures to the Contractor, accordingly. Contractor is responsible for promptly reporting to the State any known breach of security.

**36. TERM OF CONTRACT**

This Contract is effective upon OSP approval and will end no later than December 30, 2016, unless otherwise terminated in accordance with the Termination provisions of this Contract or otherwise extended or amended in accordance with the provisions of this Contract.

**37. COMMENCEMENT OF WORK**

No work shall be performed by Contractor and the State shall not be bound until such time as this Contract is fully executed between the State and the Contractor and all required approvals are obtained.

**38. COMPLIANCE WITH CIVIL RIGHTS LAWS**

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

**39. ANTI-KICKBACK CLAUSE**

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

**40. CLEAN AIR ACT**

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The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities.

**41. ENERGY POLICY AND CONSERVATION ACT**

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

**42. CLEAN WATER ACT**

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

**43. ANTI-LOBBYING AND DEBARMENT ACT**

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

**44. E-VERIFY**

Contractor acknowledges and agrees to comply with the provisions of La. R.S. 38:2212.10 and federal law pertaining to E-Verify in the performance of services under this Contract.

**45. GOVERNING LAW**

This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana, after exhaustion of administrative remedies in accordance with the Louisiana Procurement Code (La. R.S. 39:1671-1692), to the extent applicable.

**46. COMPLETE CONTRACT**

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This contract is entered into with

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neither party relying on any statement or representation made by the other party not embodied in this contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

**47. LIQUIDATED DAMAGES**

In the event the Contractor fails to meet the requirements of this Contract, the State may impose liquidated damages in the amount of \$2,000 per day while such failure persists, provided that, Contractor shall not be deemed to be in failure to meet the requirements of this Contract, and shall not be liable for liquidated damages, as a result of any inability to operate or other delay, extension or impairment of performance resulting from or arising out of any of the following.

- a. The need to address or implement any additional safety concerns or measures which are encountered by Contractor during the performance of the Contract;
- b. The condition or deterioration of, or discharge from, the magazines and other facilities in which the materials subject to this Contract are stored;
- c. The condition or deterioration of the materials subject to this Contract;
- d. Any failure of the State to give Contractor full access to the materials and work site.
- e. Any act of God or other force majeure which is beyond the reasonable control of the Contractor; and
- f. The failure of the State to timely make any payment due to Contractor hereunder.
- g. Complying with or otherwise accommodating any new or additional air, ground water or other monitoring or testing required of Contractor by any regulatory agency.

Before Contractor can be liable for liquidated damages, the State shall give Contractor written notice specifying the details of the Contractor's failure. Contractor shall have three (3) days, excluding weekends and holidays, from the date of receipt of such notice within which to cure or remedy such failure, or in the case of a failure which cannot be cured or remedied within three (3) days as specified above, to begin in good faith the cure or remedy of such failure and thereafter proceeded diligently to complete such cure or remedy. In no case will the cure or remedy of such failure extend beyond thirty (30) days.

**48. PENALTIES**

In the event that Contractor fails to meet any requirement of this contract, and such failure causes the State to incur a penalty under Article XVII, paragraphs 51 and 52 of the Administrative Settlement Agreement and Order on Consent for Removal Action applicable to this contract,

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Contractor shall reimburse the State for the penalties incurred by the State under said paragraphs 51 and 52 to the extent caused by Contractor's failure to meet the requirement of this contract.

Contractor acknowledges requirements to comply with contractual air emission standards, provide plans and reports and meet stated deadlines when required by or as mandated by the State or by state and federal regulatory agencies (EPA, LDEQ as a minimum). Failure to do so will result in penalty charges and/or liquidated damages.

**49. NON-NEGOTIABLE CONTRACT TERMS**

Non-negotiable contract terms include but are not limited to taxes, assignment of contract, audit of records, EEOC and ADA compliance, record retention, content of contract/order of precedence, contract changes, governing law, claims or controversies, and termination based on contingency of appropriation of funds.

**50. NO GUARANTEE OF QUANTITIES**

The quantities referenced in the Scope of Services are estimated to be the amount needed. In the event a greater or lesser quantity is needed, the right is reserved by the State of Louisiana to increase or decrease the amount, at the unit price agreed to by the parties.

Neither the State nor Agency obligates itself to contract for or accept more than their actual requirements during the period of the contract, as determined by actual needs and availability of appropriated funds.

**51. RECORDING OF DOCUMENTS**

The contract, Performance Bond, Payment Bond, any/all amendments and Acceptance shall be recorded by the Contractor, such recording cost being paid by the Contractor.

**52. RECORDS RETENTION**

The Contractor shall maintain all records in relation to the contract for a period of at least ten (10) years after final payment or longer if so required by applicable State or Federal law.

**53. PERFORMANCE STANDARDS**

The performance standards include but are not limited to the following:

**Camp Minden M6 Destruction**  
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- a. The intent of the State is for the Contractor to comply with all applicable state and federal regulatory requirements for the removal and destruction of 100% of the materials described in paragraph 2 of this Contract.
- b. Contractor must comply with all applicable terms and conditions of this contract in the timeline agreed upon in the final execution of the Contract.
- c. Contractor shall be responsible for adherence to agreed upon or approved actions and timeframes contained in their quote, in this contract, or as approved by the state and federal regulatory agencies. Contractor is responsible for any penalties, fines, and/or liquidated damages resulting from non-performance or noncompliance with the requirements of this contract or any law or regulation governing the work included in this contract.
- d. Detailed performance measurement/evaluation in addition to or supplementary to those required by this contract will be negotiated with the Contractor and made a part of the contract.
- e. Payment of retainage will be released in accordance with the provisions of this Contract.
- f. Contractor is encourage to participate in the Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Reporting Requirements. During the term of the contract and at expiration, the Contractor will be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each.

**54. ORDER OF PRECEDENCE**

This Contract including all attachments dated as identified in paragraph 2 above, and the Contractor's quote dated March 18, 2015, are attached hereto and, incorporated into this Contract as though fully set forth herein. In the event of an inconsistency between this Contract and/or the Contractor's quote, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence first to this Contract, and finally, the Contractor's quote.

**55. EXISTING CONDITIONS**

- a. Contractor shall not have any liability or responsibility under this Contract for any contamination existing prior to the commencement of the Contract.
- b. The Parties acknowledge that the materials subject to this Contract are being stored in existing magazines on Camp Minden. Contractor's responsibility is to remove the materials from the magazines and transport them to the site where Contractor will conduct the destruction thereof. Accordingly, Contractor shall not have any liability or responsibility for the condition or deterioration of, repair or maintenance of, or leaks or other discharges from, the magazines, except to the extent caused by Contractor. Contractor shall not have any liability or

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June 17, 2015**

responsibility for any dangers, safety risks, contamination, environmental and other risks and hazards posed by the storage of the materials in the magazines except to the extent caused by Contractor.

**56. DELAYS**

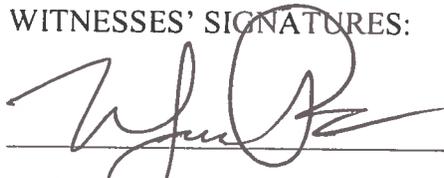
If the State delays the contractor through no fault of the contractor, the contractor will have a claim for actual expenses reasonably incurred in the performance of the contract as provided by, La. R.S. 39:1678.1.B, and as limited by Section 10 COMPENSATION TO BE PAID TO THE CONTRACTOR of this Contract.

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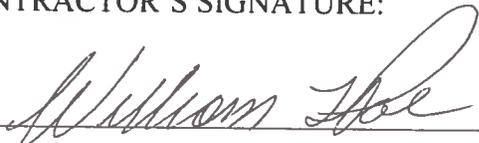
**Camp Minden M6 Destruction  
June 17, 2015**

THUS DONE AND SIGNED AT BATON ROUGE LA on this 17<sup>th</sup> day of June, 2015, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

  
\_\_\_\_\_  
  
\_\_\_\_\_

CONTRACTOR'S SIGNATURE:

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

Title: President  
\_\_\_\_\_

THUS DONE AND SIGNED AT Pineville, Louisiana on this 17<sup>th</sup> day of June, 2015, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

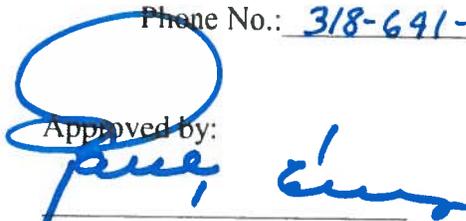
  
\_\_\_\_\_  
  
\_\_\_\_\_

LOUISIANA MILITARY DEPARTMENT SIGNATURE:

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

Title LMD-Dep Dir Contracting & Purchasing  
\_\_\_\_\_

Phone No.: 318-641-5359  
\_\_\_\_\_

Approved by:   
\_\_\_\_\_  
Director of State Procurement

Date: 6/17/2015  
\_\_\_\_\_