



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
391 LUKENS DRIVE
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600
FAX NO.: (302) 395 - 2601

November 2, 2015

Mr. Michael Naughter
Program Manager
Black and Veatch
200 Bellevue Parkway, Suite 215
Wilmington, Delaware 19809

RE: Signed Contract #NAT-15375 Ecological Consulting Services

Dear Mr. Naughter:

Enclosed please find a signed copy of Contract #NAT-15375 Ecological Consulting Services. The enclosed copy is for your records. Thank you for your interest in the contract and DNREC-SIRS looks forward to working with you on this contract. Should you have any questions please feel free to contact me at 302-395-2600.

Thank you,

Original on File

Morgan M. Price
Environmental Scientist

Enclosure

MMP:vdh
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DNREC - SIRS

PROFESSIONAL SERVICES AGREEMENT
Contract No. #NAT-15375 Ecological Consulting Services

This Agreement ("Agreement") is entered into as of October 26, 2015 ("Effective Date") and will end on September 30, 2018, by and between the State of Delaware Department of Natural Resources and Environmental Control ("Delaware"), and Black & Veatch, a corporation, with offices at 200 Bellevue Parkway, Suite 215, Wilmington, Delaware 19809 ("Black & Veatch").

WHEREAS, Delaware desires to obtain certain professional services regarding Environmental Investigation and Remediation Services; and

WHEREAS, Black & Veatch desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Black & Veatch represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Black & Veatch agree as follows:

1. Services.

1.1 This Agreement is a multiple source contract for professional services. Black & Veatch is one of several firms that Delaware has entered into agreements with under Contract No. #NAT-15375 Ecological Consulting Services to provide professional services to DNREC, consisting of Environmental Investigation and Remediation Services, on specific projects. Entering into this Agreement entitles Black & Veatch to receive notices from Delaware during the Contract period when DNREC requires professional services on any specific project. The notice will request that Black & Veatch submit a proposal to Delaware for the professional services requested in the notice. The notice may be sent, at Delaware's discretion, to more than one firm under Contract No. #NAT-15375 Ecological Consulting Services. Black & Veatch's specific project proposal shall be based on the list of prices established as part of this Agreement. Delaware, at its discretion, will select a specific project proposal from one of the vendors that received the notice. If Black & Veatch's proposal is selected, Black & Veatch will be invited to enter into negotiations to conclude an agreement to provide professional services on the specific project. In the negotiations, Delaware may request that Black & Veatch use certain positions, or place certain individuals in the positions, to provide the professional services called for in the notice. If Delaware and Black & Veatch are able to reach an agreement on the project specific proposal, it shall be set forth in an Addendum which shall be attached to this Agreement and made a part hereof.

As used hereinafter, the term "Agreement" shall include all Addenda entered into hereunder, unless the two terms are used separately and the context indicates otherwise.

1.2 Black & Veatch shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.3 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and Black & Veatch. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Addenda for specific projects; (c) Delaware's request for proposals; (d) Specifications or Scope of Work; (e) Proposal; (f) Purchase Order; and (g) Special Instructions. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.4 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Black & Veatch shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Black & Veatch, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Black & Veatch for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.5 Black & Veatch will not be required to make changes to its scope of work that result in Black & Veatch's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from October 26, 2015 through September 30, 2018. This Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

2.2 Delaware will pay Black & Veatch for the performance of services on a specific project described in the Addendum for that project. Delaware has no

obligation to pay Black & Veatch for any services under this Agreement unless an Addendum has been signed by Delaware and Black & Veatch for a specific project, and Delaware has issued a purchase order for the services called for in the Addendum.

2.3 Each specific project Addendum entered into under this Agreement shall be the subject of a separate purchase order. It is expressly understood that the work defined in any Addendum to this Agreement must be completed by Black & Veatch and it shall be Black & Veatch's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. Delaware's total liability for all charges for services that may become due under any Addendum this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Black & Veatch for the specific project Addendum, including any amendments to the purchase order based on additional work required by any change order. Black & Veatch agrees that no work will be completed, nor costs incurred to be paid under this agreement, until a fully executed purchase order has been approved by the Department of Finance in Delaware's First State Financial system and authorization by Delaware.

2.4 Black & Veatch shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Black & Veatch a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Black & Veatch to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to Black & Veatch, 200 Bellevue Parkway, Suite 215, Wilmington, Delaware 19809.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Black & Veatch. If an Appendix specifically provides for expense reimbursement, Black & Veatch shall be reimbursed only for reasonable expenses incurred by Black & Veatch in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to Black & Veatch all damages, costs and expenses caused by Black & Veatch's negligence, resulting from or arising out of errors or omissions in Black & Veatch's work products, which have not been previously paid to Black & Veatch.

2.8 Invoices shall be submitted to:

DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720
ATTN: Project Manager

3. Responsibilities of Black & Veatch.

3.1 Black & Veatch shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Black & Veatch, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Black & Veatch shall follow practices consistent with generally accepted professional and technical standards. Black & Veatch shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, Black & Veatch shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Black & Veatch shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Black & Veatch's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the Black & Veatch to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Black & Veatch will not produce a work product that violates or infringes on any copyright or patent rights. Black & Veatch shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by Black & Veatch shall not in any way relieve Black & Veatch of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Black & Veatch's services herein shall not be construed to operate as a waiver of any rights under

this Agreement or of any cause of action arising out of the performance of this Agreement, and Black & Veatch shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Black & Veatch's performance or failure to perform under this Agreement.

3.4 Black & Veatch shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Black & Veatch's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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The Project Manager, and all of the Black & Veatch's associates and employees who will perform services on any specific project under this Contract, are subject to the review and approval of Delaware, where such approval shall not be unreasonably withheld.

3.5 On any specific project, the designation of persons for each position performing serviced called for by this Agreement is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Black & Veatch will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill a staff position or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Black & Veatch fails to make a required replacement within 30 days, Delaware may terminate this Agreement, or any Addendum hereto, for default. Upon receipt of written notice from Delaware that an employee of Black & Veatch is unsuitable to Delaware for good cause, Black & Veatch shall remove such employee from the performance of services and substitute, with Delaware's approval, in his/her place a suitable employee, the approval of which by Delaware shall not be unreasonably withheld.

3.6 Black & Veatch shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 Black & Veatch agrees that its officers and employees will cooperate with Delaware in the performance of services under any Addendum to this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 Black & Veatch has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by

Delaware or any other political subdivision of Delaware.

3.9 Black & Veatch will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule for a specific project may be included in the Addendum.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that Black & Veatch fails to complete the project or any phase thereof within the time specified in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in any Addendum to this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in the Addendum.

5. State Responsibilities.

5.1 In connection with Black & Veatch's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 Delaware agrees that its officers and employees will cooperate with Black & Veatch in the performance of services under this Agreement and will be available for consultation with Black & Veatch at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by Black & Veatch under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Black & Veatch by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to Black & Veatch. It is understood that Delaware's representatives' review comments do not relieve Black & Veatch from the

responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by Black & Veatch as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

Black & Veatch shall return any original data provided by Delaware.

5.6 Delaware shall assist Black & Veatch in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 Black & Veatch will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use Black & Veatch's name, either express or implied, in any of its advertising or sales materials. Black & Veatch reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Black & Veatch for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Black & Veatch shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Black & Veatch retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents

developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Black & Veatch retains title, whether individually by Black & Veatch or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall Black & Veatch be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Black & Veatch shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Black & Veatch prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Black & Veatch even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 Black & Veatch warrants that its services will be performed in a good and workmanlike manner. Black & Veatch agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which

such products are governed. With respect to all third-party products and services purchased by Black & Veatch for Delaware in connection with the provision of the Services, Black & Veatch shall pass through or assign to Delaware the rights Black & Veatch obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 Black & Veatch shall indemnify and hold harmless Delaware, its agents, and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Black & Veatch, its agents or employees, or (B) Black & Veatch's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Black & Veatch shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) Black & Veatch shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies Black & Veatch in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Black & Veatch will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Black & Veatch will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by Black & Veatch; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by Black & Veatch; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Black & Veatch's opinion is likely to be, held to be infringing, Black & Veatch shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and Black & Veatch's entire liability with respect to infringement.

10. Employees.

10.1 Black & Veatch has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Black & Veatch in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, Black & Veatch shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Black & Veatch shall be solely responsible for, and shall indemnify, defend, and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Black & Veatch acknowledges that Black & Veatch and any subcontractors, agents or employees employed by Black & Veatch shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 Black & Veatch shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, Black & Veatch has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by Black & Veatch under this Agreement, or any Addendum hereto, for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Black & Veatch at least

30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Black & Veatch its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Black & Veatch shall not perform further work under this Agreement after the effective date of suspension. Black & Veatch shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by Black & Veatch for any cause other than the error or omission of the Black & Veatch, for an aggregate period in excess of 30 days, Black & Veatch shall be entitled to an equitable adjustment of the compensation payable to Black & Veatch under this Agreement to reimburse Black & Veatch for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Black & Veatch is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay Black & Veatch that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Black & Veatch at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Black & Veatch's default.

- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Black & Veatch shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Black & Veatch assigned to the performance of the Agreement, or any Addendum hereto, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of Black & Veatch to fulfill contractual obligations it is determined that Black & Veatch has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and Black & Veatch provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to Black & Veatch, terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Black & Veatch or any agent or representative of Black & Veatch to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against Black & Veatch it could pursue in the event of a breach of this Agreement by Black & Veatch.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and

obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by Black & Veatch to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by Black & Veatch, without prior written approval of Delaware.

15.3 Approval by Delaware of Black & Veatch's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Black & Veatch of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 Black & Veatch shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Black & Veatch, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the Black & Veatch's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end

of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

Black & Veatch and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and Black & Veatch with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 Black & Veatch may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, Black & Veatch shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Black & Veatch shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, nor any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 Black & Veatch covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Black & Veatch further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 Black & Veatch acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Black & Veatch recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Black & Veatch in breach of the Agreement, terminate the Agreement, and designate Black & Veatch as non-responsible.

20.6 Black & Veatch warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 Black & Veatch shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Black & Veatch's performance and records pertaining to this Agreement at the Black & Veatch business office during normal business hours.

21. Insurance.

21.1 Black & Veatch must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. Black & Veatch must carry the following coverage depending on the type of service or product being delivered:

A. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

B. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

or

C. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

or

D. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others,

and

F. Black & Veatch shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The Black & Veatch is an independent contractor and is not an employee of the State of Delaware.

Black & Veatch must carry (A), (E), and (F), and at least one of (B), (C), or (D), depending on the type of service or product being delivered.

21.2. Black & Veatch shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, Black & Veatch hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Contract.

23. Surviving Clauses

The following clauses survive the termination of this Contract: Section 9 (fill in all others you wish to survive termination).

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Black & Veatch consents to jurisdiction and venue in the State of Delaware.

25. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

To Delaware: Timothy Ratsep
Program Administrator
DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720

To Black & Veatch: Michael Naughter
Program Manager
Black & Veatch
200 Bellevue Parkway, Suite 215
Wilmington, Delaware 19809

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
Original on File

Original on File

Witness

Date: 10/29/15

[Signature]

Name: David Small

Title: Secretary

Date: 10/29/15

BLACK & VEATCH

Original on File

Witness

Date: 10/12/15

Original on File

[Signature]

Name: Todd Dudley

Title: Associate Vice-President

Date: 10/12/15



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
391 LUKENS DRIVE
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600
FAX NO.: (302) 395 - 2601

November 2, 2015

Mr. Gordy Porter
Vice President
EA Engineering, Science and Technology, Inc.
1311K Continental Drive
Abington, Maryland 21009

RE: Signed Contract #NAT-15375 Ecological Consulting Services

Dear Mr. Porter:

Enclosed please find a signed copy of Contract #NAT-15375 Ecological Consulting Services. The enclosed copy is for your records. Thank you for your interest in the contract and DNREC-SIRS looks forward to working with you on this contract. Should you have any questions please feel free to contact me at 302-395-2600.

Thank you,



Morgan M. Price
Environmental Scientist

Enclosure

MMP:vdh
MMP15099.doc
AD003 I B 1

Delaware's good nature depends on you!

PROFESSIONAL SERVICES AGREEMENT
Contract No. #NAT-15375 Ecological Consulting Services

RECEIVED
OCT 08 2015
DNREC - SIRS

This Agreement ("Agreement") is entered into as of October 26, 2015 ("Effective Date") and will end on September 30, 2018, by and between the State of Delaware Department of Natural Resources and Environmental Control ("Delaware"), and EA Engineering, Science and Technology, Inc., a corporation, with offices at 1311K Continental Drive, Abington, Maryland 21009 ("EA Engineering, Science and Technology, Inc.").

WHEREAS, Delaware desires to obtain certain professional services regarding Environmental Investigation and Remediation Services; and

WHEREAS, EA Engineering, Science and Technology, Inc. desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and EA Engineering, Science and Technology, Inc. represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and EA Engineering, Science and Technology, Inc. agree as follows:

1. Services.

1.1 This Agreement is a multiple source contract for professional services. EA Engineering, Science and Technology, Inc. is one of several firms that Delaware has entered into agreements with under Contract No. #NAT-15375 Ecological Consulting Services to provide professional services to DNREC, consisting of Environmental Investigation and Remediation Services, on specific projects. Entering into this Agreement entitles EA Engineering, Science and Technology, Inc. to receive notices from Delaware during the Contract period when DNREC requires professional services on any specific project. The notice will request that EA Engineering, Science and Technology, Inc. submit a proposal to Delaware for the professional services requested in the notice. The notice may be sent, at Delaware's discretion, to more than one firm under Contract No. #NAT-15375 Ecological Consulting Services. EA Engineering, Science and Technology, Inc.'s specific project proposal shall be based on the list of prices established as part of this Agreement. Delaware, at its discretion, will select a specific project proposal from one of the vendors that received the notice. If EA Engineering, Science and Technology, Inc.'s proposal is selected, EA Engineering, Science and Technology, Inc. will be invited to enter into negotiations to conclude an agreement to provide professional services on the specific project. In the negotiations, Delaware may request that EA Engineering, Science and Technology, Inc. use certain positions, or

place certain individuals in the positions, to provide the professional services called for in the notice. If Delaware and EA Engineering, Science and Technology, Inc. are able to reach an agreement on the project specific proposal, it shall be set forth in an Addendum which shall be attached to this Agreement and made a part hereof. As used hereinafter, the term "Agreement" shall include all Addenda entered into hereunder, unless the two terms are used separately and the context indicates otherwise.

1.2 EA Engineering, Science and Technology, Inc. shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.3 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and EA Engineering, Science and Technology, Inc. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Addenda for specific projects; (c) Delaware's request for proposals; (d) Specifications or Scope of Work; (e) Proposal; (f) Purchase Order; and (g) Special Instructions. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.4 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by EA Engineering, Science and Technology, Inc. shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify EA Engineering, Science and Technology, Inc., who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by EA Engineering, Science and Technology, Inc. for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.5 EA Engineering, Science and Technology, Inc. will not be required to make changes to its scope of work that result in EA Engineering, Science and Technology, Inc.'s costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from October 26, 2015 through September 30, 2018. This Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

2.2 Delaware will pay EA Engineering, Science and Technology, Inc. for the performance of services on a specific project described in the Addendum for that project. Delaware has no obligation to pay EA Engineering, Science and Technology, Inc. for any services under this Agreement unless an Addendum has been signed by Delaware and EA Engineering, Science and Technology, Inc. for a specific project, and Delaware has issued a purchase order for the services called for in the Addendum.

2.3 Each specific project Addendum entered into under this Agreement shall be the subject of a separate purchase order. It is expressly understood that the work defined in any Addendum to this Agreement must be completed by EA Engineering, Science and Technology, Inc. and it shall be EA Engineering, Science and Technology, Inc.'s responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. Delaware's total liability for all charges for services that may become due under any Addendum this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to EA Engineering, Science and Technology, Inc. for the specific project Addendum, including any amendments to the purchase order based on additional work required by any change order. EA Engineering, Science and Technology, Inc. agrees that no work will be completed, nor costs incurred to be paid under this agreement, until a fully executed purchase order has been approved by the Department of Finance in Delaware's First State Financial system and authorization by Delaware.

2.4 EA Engineering, Science and Technology, Inc. shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide EA Engineering, Science and Technology, Inc. a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle EA Engineering, Science and Technology, Inc. to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to EA Engineering, Science and Technology, Inc., 1311K Continental Drive, Abington, Maryland 21009.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by EA Engineering, Science and Technology, Inc. If an Appendix specifically provides for expense reimbursement, EA Engineering, Science and Technology, Inc. shall be reimbursed only for reasonable expenses incurred by EA Engineering, Science and Technology, Inc. in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to EA Engineering, Science and Technology, Inc. all damages, costs and expenses caused by EA Engineering, Science and Technology, Inc.'s negligence, resulting from or arising out of errors or omissions in EA Engineering, Science and Technology, Inc.'s work products, which have not been previously paid to EA Engineering, Science and Technology, Inc.

2.8 Invoices shall be submitted to:

DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720
ATTN: Project Manager

3. Responsibilities of EA Engineering, Science and Technology, Inc.

3.1 EA Engineering, Science and Technology, Inc. shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by EA Engineering, Science and Technology, Inc., its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, EA Engineering, Science and Technology, Inc. shall follow practices consistent with generally accepted professional and technical standards. EA Engineering, Science and Technology, Inc. shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, EA Engineering, Science and Technology, Inc. shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. EA

Engineering, Science and Technology, Inc. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by EA Engineering, Science and Technology, Inc.'s failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the EA Engineering, Science and Technology, Inc. to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. EA Engineering, Science and Technology, Inc. will not produce a work product that violates or infringes on any copyright or patent rights. EA Engineering, Science and Technology, Inc. shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by EA Engineering, Science and Technology, Inc. shall not in any way relieve EA Engineering, Science and Technology, Inc. of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of EA Engineering, Science and Technology, Inc.'s services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and EA Engineering, Science and Technology, Inc. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by EA Engineering, Science and Technology, Inc.'s performance or failure to perform under this Agreement.

3.4 EA Engineering, Science and Technology, Inc. shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by EA Engineering, Science and Technology, Inc.'s associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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The Project Manager, and all of the EA Engineering, Science and Technology, Inc.'s associates and employees who will perform services on any specific project under this Contract, are subject to the review and approval of Delaware, where such approval shall not be unreasonably withheld.

3.5 On any specific project, the designation of persons for each position performing serviced called for by this Agreement is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, EA Engineering, Science and Technology, Inc. will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill a staff

position or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If EA Engineering, Science and Technology, Inc. fails to make a required replacement within 30 days, Delaware may terminate this Agreement, or any Addendum hereto, for default. Upon receipt of written notice from Delaware that an employee of EA Engineering, Science and Technology, Inc. is unsuitable to Delaware for good cause, EA Engineering, Science and Technology, Inc. shall remove such employee from the performance of services and substitute, with Delaware's approval, in his/her place a suitable employee, the approval of which by Delaware shall not be unreasonably withheld.

3.6 EA Engineering, Science and Technology, Inc. shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 EA Engineering, Science and Technology, Inc. agrees that its officers and employees will cooperate with Delaware in the performance of services under any Addendum to this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 EA Engineering, Science and Technology, Inc. has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 EA Engineering, Science and Technology, Inc. will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule for a specific project may be included in the Addendum.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that EA Engineering, Science and Technology, Inc. fails to complete the project or any phase thereof within the time specified in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof,

with such diligence as will insure its completion within the time specified in any Addendum to this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in the Addendum.

5. State Responsibilities.

5.1 In connection with EA Engineering, Science and Technology, Inc.'s provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 Delaware agrees that its officers and employees will cooperate with EA Engineering, Science and Technology, Inc. in the performance of services under this Agreement and will be available for consultation with EA Engineering, Science and Technology, Inc. at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by EA Engineering, Science and Technology, Inc. under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform EA Engineering, Science and Technology, Inc. by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to EA Engineering, Science and Technology, Inc. It is understood that Delaware's representatives' review comments do not relieve EA Engineering, Science and Technology, Inc. from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by EA Engineering, Science and Technology, Inc. as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

EA Engineering, Science and Technology, Inc. shall return any original data provided by Delaware.

5.6 Delaware shall assist EA Engineering, Science and Technology, Inc. in

obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 EA Engineering, Science and Technology, Inc. will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use EA Engineering, Science and Technology, Inc.'s name, either express or implied, in any of its advertising or sales materials. EA Engineering, Science and Technology, Inc. reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by EA Engineering, Science and Technology, Inc. for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. EA Engineering, Science and Technology, Inc. shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 EA Engineering, Science and Technology, Inc. retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which EA Engineering, Science and Technology, Inc. retains title, whether individually by EA Engineering, Science and Technology, Inc. or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall EA Engineering, Science and Technology, Inc. be precluded

from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, EA Engineering, Science and Technology, Inc. shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by EA Engineering, Science and Technology, Inc. prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of EA Engineering, Science and Technology, Inc. even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 EA Engineering, Science and Technology, Inc. warrants that its services will be performed in a good and workmanlike manner. EA Engineering, Science and Technology, Inc. agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by EA Engineering, Science and Technology, Inc. for Delaware in connection with the provision of the Services, EA Engineering, Science and Technology, Inc. shall pass through or assign to Delaware the rights EA Engineering, Science and Technology, Inc. obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 EA Engineering, Science and Technology, Inc. shall indemnify and hold harmless Delaware, its agents, and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the EA Engineering, Science and Technology, Inc., its agents or employees, or (B) EA Engineering, Science and Technology, Inc.'s breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) EA Engineering, Science and Technology, Inc. shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) EA Engineering, Science and Technology, Inc. shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies EA Engineering, Science and Technology, Inc. in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, EA Engineering, Science and Technology, Inc. will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. EA Engineering, Science and Technology, Inc. will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by EA Engineering, Science and Technology, Inc.; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by EA Engineering, Science and Technology, Inc.; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in EA Engineering, Science and Technology, Inc.'s opinion is likely to be, held to be infringing, EA Engineering, Science and Technology, Inc. shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and EA Engineering, Science and Technology, Inc.'s entire liability with respect to infringement.

10. Employees.

10.1 EA Engineering, Science and Technology, Inc. has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by EA Engineering, Science and Technology, Inc. in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner,

employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any ~~individual or company a party employs as a partner, employee or independent contractor~~ and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, EA Engineering, Science and Technology, Inc. shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. EA Engineering, Science and Technology, Inc. shall be solely responsible for, and shall indemnify, defend, and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 EA Engineering, Science and Technology, Inc. acknowledges that EA Engineering, Science and Technology, Inc. and any subcontractors, agents or employees employed by EA Engineering, Science and Technology, Inc. shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 EA Engineering, Science and Technology, Inc. shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, EA Engineering, Science and Technology, Inc. has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by EA Engineering, Science and Technology, Inc. under this Agreement, or any Addendum hereto, for such period of time as Delaware, at its sole discretion, may prescribe by providing written

notice to EA Engineering, Science and Technology, Inc. at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay EA Engineering, Science and Technology, Inc. its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. EA Engineering, Science and Technology, Inc. shall not perform further work under this Agreement after the effective date of suspension. EA Engineering, Science and Technology, Inc. shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by EA Engineering, Science and Technology, Inc. for any cause other than the error or omission of the EA Engineering, Science and Technology, Inc., for an aggregate period in excess of 30 days, EA Engineering, Science and Technology, Inc. shall be entitled to an equitable adjustment of the compensation payable to EA Engineering, Science and Technology, Inc. under this Agreement to reimburse EA Engineering, Science and Technology, Inc. for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after EA Engineering, Science and Technology, Inc. is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay EA Engineering, Science and Technology, Inc. that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and

- b. Any payment due to EA Engineering, Science and Technology, Inc. at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of EA Engineering, Science and Technology, Inc.'s default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event EA Engineering, Science and Technology, Inc. shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of EA Engineering, Science and Technology, Inc. assigned to the performance of the Agreement, or any Addendum hereto, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of EA Engineering, Science and Technology, Inc. to fulfill contractual obligations it is determined that EA Engineering, Science and Technology, Inc. has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and EA Engineering, Science and Technology, Inc. provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to EA Engineering, Science and Technology, Inc., terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by EA Engineering, Science and Technology, Inc. or any agent or representative of EA Engineering, Science and Technology, Inc. to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against EA Engineering, Science and Technology, Inc. it could pursue in the event of a breach of this Agreement by EA Engineering, Science and Technology, Inc.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by EA Engineering, Science and Technology, Inc. to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by EA Engineering, Science and Technology, Inc., without prior written approval of Delaware.

15.3 Approval by Delaware of EA Engineering, Science and Technology, Inc.'s request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve EA Engineering, Science and Technology, Inc. of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 EA Engineering, Science and Technology, Inc. shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by EA Engineering, Science and Technology, Inc., its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the EA Engineering, Science and Technology, Inc.'s request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by

the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

EA Engineering, Science and Technology, Inc. and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and EA Engineering, Science and Technology, Inc. with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 EA Engineering, Science and Technology, Inc. may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, EA Engineering, Science and Technology, Inc. shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. EA Engineering, Science and Technology, Inc. shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, nor any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 EA Engineering, Science and Technology, Inc. covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. EA Engineering, Science and Technology, Inc. further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 EA Engineering, Science and Technology, Inc. acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. EA Engineering, Science and Technology, Inc. recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare EA Engineering, Science and Technology, Inc. in breach of the Agreement, terminate the Agreement, and designate EA Engineering, Science and Technology, Inc. as non-responsible.

20.6 EA Engineering, Science and Technology, Inc. warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 EA Engineering, Science and Technology, Inc. shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit EA Engineering, Science and Technology, Inc.'s performance and records pertaining to this Agreement at the EA Engineering, Science and Technology, Inc. business office during normal business hours.

21. Insurance.

21.1 EA Engineering, Science and Technology, Inc. must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. EA Engineering, Science and Technology, Inc. must carry the following coverage depending on the type of service or product being delivered:

A. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

B. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

or

C. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

or

D. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to

property damage to others,

and

- F. EA Engineering, Science and Technology, Inc. shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The EA Engineering, Science and Technology, Inc. is an independent contractor and is not an employee of the State of Delaware.

EA Engineering, Science and Technology, Inc. must carry (A), (E), and (F), and at least one of (B), (C), or (D), depending on the type of service or product being delivered.

- 21.2. EA Engineering, Science and Technology, Inc. shall provide forty-five (45) days written notice of cancellation or material change of any policies.
- 21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.
- 21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, EA Engineering, Science and Technology, Inc. hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Contract.

23. Surviving Clauses

The following clauses survive the termination of this Contract: Section 9 (fill in all others you wish to survive termination).

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. EA Engineering, Science and Technology, Inc. consents to jurisdiction and venue in the State of Delaware.

25. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

To Delaware:

Timothy Ratsep
Program Administrator
DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720

To EA Engineering, Science and Technology, Inc.:

Gordon Porter
Vice President
EA Engineering, Science and Technology, Inc.
1311K Continental Drive
Abington, Maryland 21009

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**



Witness



Name: David Small

Title: Secretary

Date: 10/29/15

Date: 10/29/15

**EA ENGINEERING, SCIENCE AND
TECHNOLOGY, INC., PBC**



Witness



Name: Gordy Porter

Title: Vice President

Date: 7 October 2015

Date: 7 October 2015



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
391 LUKENS DRIVE
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600
FAX No.: (302) 395 -- 2601

November 2, 2015

Ms. Peg McBrien
Program Manager
Louis Berger
350 Ealeview Blvd., Suite 250
Exton, Pennsylvania 19341

RE: Signed Contract #NAT-15375 Ecological Consulting Services

Dear Ms. McBrien:

Enclosed please find a signed copy of Contract #NAT-15375 Ecological Consulting Services. The enclosed copy is for your records. Thank you for your interest in the contract and DNREC-SIRS looks forward to working with you on this contract. Should you have any questions please feel free to contact me at 302-395-2600.

Thank you,
Original on File

Morgan M. Price
Environmental Scientist

Enclosure

MMP:vdh
MMP15096.doc
AD003 I B 1

Delaware's good nature depends on you!

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Recycled Paper

RECEIVED

OCT 19 2015

PROFESSIONAL SERVICES AGREEMENT

Contract No. #NAT-15375 Ecological Consulting Services

DNREC - SIRS

This Agreement ("Agreement") is entered into as of October 26, 2015 ("Effective Date") and will end on September 30, 2018, by and between the State of Delaware Department of Natural Resources and Environmental Control ("Delaware"), and Louis Berger, a corporation, with offices at 350 Eagleview Boulevard, Suite 250, Exton, Pennsylvania 19341 ("Louis Berger").

WHEREAS, Delaware desires to obtain certain professional services regarding Environmental Investigation and Remediation Services; and

WHEREAS, Louis Berger desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Louis Berger represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Louis Berger agree as follows:

i. Services.

1.1 This Agreement is a multiple source contract for professional services. Louis Berger is one of several firms that Delaware has entered into agreements with under Contract No. #NAT-15375 Ecological Consulting Services to provide professional services to DNREC, consisting of Environmental Investigation and Remediation Services, on specific projects. Entering into this Agreement entitles Louis Berger to receive notices from Delaware during the Contract period when DNREC requires professional services on any specific project. The notice will request that Louis Berger submit a proposal to Delaware for the professional services requested in the notice. The notice may be sent, at Delaware's discretion, to more than one firm under Contract No. #NAT-15375 Ecological Consulting Services. Louis Berger's specific project proposal shall be based on the list of prices established as part of this Agreement. Delaware, at its discretion, will select a specific project proposal from one of the vendors that received the notice. If Louis Berger's proposal is selected, Louis Berger will be invited to enter into negotiations to conclude an agreement to provide professional services on the specific project. In the negotiations, Delaware may request that Louis Berger use certain positions, or place certain individuals in the positions, to provide the professional services called for in the notice. If Delaware and Louis Berger are able to reach an agreement on the project specific proposal, it shall be set forth in an Addendum which shall be attached to this Agreement and made a part hereof. As used

hereinafter, the term "Agreement" shall include all Addenda entered into hereunder, unless the two terms are used separately and the context indicates otherwise.

1.2 Louis Berger shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.3 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and Louis Berger. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Addenda for specific projects; (c) Delaware's request for proposals; (d) Specifications or Scope of Work; (e) Proposal; (f) Purchase Order; and (g) Special Instructions. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.4 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Louis Berger shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Louis Berger, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Louis Berger for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.5 Louis Berger will not be required to make changes to its scope of work that result in Louis Berger's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from October 26, 2015 through September 30, 2018. This Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

2.2 Delaware will pay Louis Berger for the performance of services on a specific project described in the Addendum for that project. Delaware has no obligation to pay Louis Berger for any services under this Agreement unless an Addendum has

been signed by Delaware and Louis Berger for a specific project, and Delaware has issued a purchase order for the services called for in the Addendum.

2.3 Each specific project Addendum entered into under this Agreement shall be the subject of a separate purchase order. It is expressly understood that the work defined in any Addendum to this Agreement must be completed by Louis Berger and it shall be Louis Berger's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. Delaware's total liability for all charges for services that may become due under any Addendum this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Louis Berger for the specific project Addendum, including any amendments to the purchase order based on additional work required by any change order. Louis Berger agrees that no work will be completed, nor costs incurred to be paid under this agreement, until a fully executed purchase order has been approved by the Department of Finance in Delaware's First State Financial system and authorization by Delaware.

2.4 Louis Berger shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Louis Berger a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Louis Berger to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to Louis Berger, 350 Eagleview Boulevard, Suite 250, Exton, Pennsylvania 19341.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Louis Berger. If an Appendix specifically provides for expense reimbursement, Louis Berger shall be reimbursed only for reasonable expenses incurred by Louis Berger in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to Louis Berger all damages, costs and expenses caused by Louis Berger's negligence, resulting from or

arising out of errors or omissions in Louis Berger's work products, which have not been previously paid to Louis Berger.

2.8 Invoices shall be submitted to:

DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720
ATTN: Project Manager

3. Responsibilities of Louis Berger.

3.1 Louis Berger shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Louis Berger, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Louis Berger shall follow practices consistent with generally accepted professional and technical standards. Louis Berger shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/> and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, Louis Berger shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Louis Berger shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Louis Berger's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the Louis Berger to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Louis Berger will not produce a work product that violates or infringes on any copyright or patent rights. Louis Berger shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by Louis Berger shall not in any way relieve Louis Berger of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Louis Berger's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Louis Berger shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Louis Berger's

performance or failure to perform under this Agreement.

3.4 Louis Berger shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Louis Berger's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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The Project Manager, and all of the Louis Berger's associates and employees who will perform services on any specific project under this Contract, are subject to the review and approval of Delaware, where such approval shall not be unreasonably withheld.

3.5 On any specific project, the designation of persons for each position performing services called for by this Agreement is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Louis Berger will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill a staff position or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Louis Berger fails to make a required replacement within 30 days, Delaware may terminate this Agreement, or any Addendum hereto, for default. Upon receipt of written notice from Delaware that an employee of Louis Berger is unsuitable to Delaware for good cause, Louis Berger shall remove such employee from the performance of services and substitute, with Delaware's approval, in his/her place a suitable employee, the approval of which by Delaware shall not be unreasonably withheld.

3.6 Louis Berger shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 Louis Berger agrees that its officers and employees will cooperate with Delaware in the performance of services under any Addendum to this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 Louis Berger has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 Louis Berger will not use Delaware's name, either express or implied, in any

of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule for a specific project may be included in the Addendum.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that Louis Berger fails to complete the project or any phase thereof within the time specified in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in any Addendum to this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in the Addendum.

5. State Responsibilities.

5.1 In connection with Louis Berger's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 Delaware agrees that its officers and employees will cooperate with Louis Berger in the performance of services under this Agreement and will be available for consultation with Louis Berger at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by Louis Berger under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Louis Berger by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to Louis Berger. It is understood that Delaware's representatives' review comments do not relieve Louis Berger from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by Louis Berger as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports; surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

Louis Berger shall return any original data provided by Delaware.

5.6 Delaware shall assist Louis Berger in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 Louis Berger will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use Louis Berger's name, either express or implied, in any of its advertising or sales materials. Louis Berger reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Louis Berger for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Louis Berger shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Louis Berger retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Louis Berger retains

title, whether individually by Louis Berger or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall Louis Berger be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Louis Berger shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Louis Berger prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Louis Berger even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 Louis Berger warrants that its services will be performed in a good and workmanlike manner. Louis Berger agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Louis Berger for Delaware in connection with the provision of the Services, Louis Berger shall pass through or assign to Delaware the rights Louis Berger obtains from the manufacturers and/or vendors of such products and

services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 Louis Berger shall indemnify and hold harmless Delaware, its agents, and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Louis Berger, its agents or employees, or (B) Louis Berger's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Louis Berger shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) Louis Berger shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies Louis Berger in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Louis Berger will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Louis Berger will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by Louis Berger; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by Louis Berger; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Louis Berger's opinion is likely to be, held to be infringing, Louis Berger shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and Louis Berger's entire liability with respect to infringement.

10. Employees.

10.1 Louis Berger has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Louis Berger in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12)

months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, Louis Berger shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Louis Berger shall be solely responsible for, and shall indemnify, defend, and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Louis Berger acknowledges that Louis Berger and any subcontractors, agents or employees employed by Louis Berger shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 Louis Berger shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, Louis Berger has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by Louis Berger under this Agreement, or any Addendum hereto, for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Louis Berger at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Louis Berger its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Louis Berger shall not perform further work under this Agreement after the effective date of suspension. Louis Berger shall not perform

further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by Louis Berger for any cause other than the error or omission of the Louis Berger, for an aggregate period in excess of 30 days, Louis Berger shall be entitled to an equitable adjustment of the compensation payable to Louis Berger under this Agreement to reimburse Louis Berger for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Louis Berger is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay Louis Berger that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Louis Berger at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Louis Berger's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Louis Berger shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Louis Berger assigned to the performance of the Agreement, or any Addendum hereto,

notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of Louis Berger to fulfill contractual obligations it is determined that Louis Berger has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and Louis Berger provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to Louis Berger, terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Louis Berger or any agent or representative of Louis Berger to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against Louis Berger it could pursue in the event of a breach of this Agreement by Louis Berger.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by Louis Berger to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by Louis Berger, without prior written approval of Delaware.

15.3 Approval by Delaware of Louis Berger's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Louis Berger of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 Louis Berger shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Louis Berger, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the Louis Berger's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

Louis Berger and all subcontractors represent that they are properly licensed and

authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and Louis Berger with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 Louis Berger may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, Louis Berger shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Louis Berger shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, nor any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 Louis Berger covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Louis Berger further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 Louis Berger acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Louis Berger recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Louis Berger in breach of the Agreement, terminate the Agreement, and designate Louis Berger as non-responsible.

20.6 Louis Berger warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 Louis Berger shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Louis Berger's performance and records pertaining to this Agreement at the Louis Berger business office during normal business hours.

21. Insurance.

21.1 Louis Berger must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. Louis Berger must carry the following coverage depending on the type of service or product being delivered:

- A. Comprehensive General Liability - \$1,000,000.00 per

occurrence/\$3,000,000 general aggregate,

and

B. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

or

C. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

or

D. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others,

and

F. Louis Berger shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The Louis Berger is an independent contractor and is not an employee of the State of Delaware.

Louis Berger must carry (A), (E), and (F), and at least one of (B), (C), or (D), depending on the type of service or product being delivered.

21.2. Louis Berger shall provide forty five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, Louis Berger hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Contract.

23. Surviving Clauses

The following clauses survive the termination of this Contract: Section 9 (fill in all others you wish to survive termination).

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Louis Berger consents to jurisdiction and venue in the State of Delaware.

25. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

To Delaware: Timothy Ratsep
Program Administrator
DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720

To Louis Berger: Peg McBrien
Project Manager
Louis Berger
350 Eagleview Boulevard, Suite 250
Exton, Pennsylvania 19341

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

Original on File

Original on File

[Signature]
Witness

[Signature]

Name: David Small

Title: Secretary

Date: 10/29/15

Date: 10/29/15

LOUIS BERGER

Original on File

Witness

Name: DANA OTTO

Title: SE VICE PRESIDENT

Date: _____

Date: 10/13/15



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
391 LUKENS DRIVE
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600
FAX NO.: (302) 395 - 2601

October 30, 2015

Mr. Douglas Janiec
Natural Resource Program Manager
Sovereign Consulting, Inc.
50 West Welsh Pool Road, Suite 6
Exton, Pennsylvania 19341

RE: Signed Contract #NAT-15375 Ecological Consulting Services

Dear Mr. Janiec:

Enclosed please find a signed copy of Contract #NAT-15375 Ecological Consulting Services. The enclosed copy is for your records. Thank you for your interest in the contract and DNREC-SIRS looks forward to working with you on this contract. Should you have any questions please feel free to contact me at 302-395-2600.

Thank you,
Original on File

Morgan M. Price
Environmental Scientist

Enclosure

MMP:vdh
MMP15095.doc
AD003 I B 4

Delaware's good nature depends on you!

PROFESSIONAL SERVICES AGREEMENT
Contract No. #NAT-15375 Ecological Consulting Services

This Agreement ("Agreement") is entered into as of October 26, 2015 ("Effective Date") and will end on September 30, 2018, by and between the State of Delaware Department of Natural Resources and Environmental Control ("Delaware"), and Sovereign Consulting Inc., a corporation, with offices at 50 West Welsh Pool Road, Suite 6, Exton, Pennsylvania 19341 ("Sovereign Consulting Inc.").

WHEREAS, Delaware desires to obtain certain professional services regarding Environmental Investigation and Remediation Services; and

WHEREAS, Sovereign Consulting Inc. desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Sovereign Consulting Inc. represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Sovereign Consulting Inc. agree as follows:

1. Services.

1.1 This Agreement is a multiple source contract for professional services. Sovereign Consulting Inc. is one of several firms that Delaware has entered into agreements with under Contract No. #NAT-15375 Ecological Consulting Services to provide professional services to DNREC, consisting of Environmental Investigation and Remediation Services, on specific projects. Entering into this Agreement entitles Sovereign Consulting Inc. to receive notices from Delaware during the Contract period when DNREC requires professional services on any specific project. The notice will request that Sovereign Consulting Inc. submit a proposal to Delaware for the professional services requested in the notice. The notice may be sent, at Delaware's discretion, to more than one firm under Contract No. #NAT-15375 Ecological Consulting Services. Sovereign Consulting Inc.'s specific project proposal shall be based on the list of prices established as part of this Agreement. Delaware, at its discretion, will select a specific project proposal from one of the vendors that received the notice. If Sovereign Consulting Inc.'s proposal is selected, Sovereign Consulting Inc. will be invited to enter into negotiations to conclude an agreement to provide professional services on the specific project. In the negotiations, Delaware may request that Sovereign Consulting Inc. use certain positions, or place certain individuals in the positions, to provide the professional services called for in the notice. If Delaware and Sovereign Consulting Inc. are able to reach an agreement on the project specific proposal, it shall be set forth in an

Addendum which shall be attached to this Agreement and made a part hereof. As used hereinafter, the term "Agreement" shall include all Addenda entered into hereunder, unless the two terms are used separately and the context indicates otherwise.

1.2 Sovereign Consulting Inc. shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.3 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and Sovereign Consulting Inc. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Addenda for specific projects; (c) Delaware's request for proposals; (d) Specifications or Scope of Work; (e) Proposal; (f) Purchase Order; and (g) Special Instructions. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.4 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Sovereign Consulting Inc. shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Sovereign Consulting Inc., who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Sovereign Consulting Inc. for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.5 Sovereign Consulting Inc. will not be required to make changes to its scope of work that result in Sovereign Consulting Inc.'s costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from October 26, 2015 through September 30, 2018. This Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

2.2 Delaware will pay Sovereign Consulting Inc. for the performance of services

on a specific project described in the Addendum for that project. Delaware has no obligation to pay Sovereign Consulting Inc. for any services under this Agreement unless an Addendum has been signed by Delaware and Sovereign Consulting Inc. for a specific project, and Delaware has issued a purchase order for the services called for in the Addendum.

2.3 Each specific project Addendum entered into under this Agreement shall be the subject of a separate purchase order. It is expressly understood that the work defined in any Addendum to this Agreement must be completed by Sovereign Consulting Inc. and it shall be Sovereign Consulting Inc.'s responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. Delaware's total liability for all charges for services that may become due under any Addendum this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Sovereign Consulting Inc. for the specific project Addendum, including any amendments to the purchase order based on additional work required by any change order. Sovereign Consulting Inc. agrees that no work will be completed, nor costs incurred to be paid under this agreement, until a fully executed purchase order has been approved by the Department of Finance in Delaware's First State Financial system and authorization by Delaware.

2.4 Sovereign Consulting Inc. shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Sovereign Consulting Inc. a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Sovereign Consulting Inc. to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to Sovereign Consulting Inc., 50 West Welsh Pool Road, Suite 6, Exton, Pennsylvania 19341.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Sovereign Consulting Inc. If an Appendix specifically provides for expense reimbursement, Sovereign Consulting Inc. shall be reimbursed only for reasonable expenses incurred by Sovereign Consulting Inc. in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and

penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to Sovereign Consulting Inc. all damages, costs and expenses caused by Sovereign Consulting Inc.'s negligence, resulting from or arising out of errors or omissions in Sovereign Consulting Inc.'s work products, which have not been previously paid to Sovereign Consulting Inc.

2.8 Invoices shall be submitted to:

DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720
ATTN: Project Manager

3. Responsibilities of Sovereign Consulting Inc.

3.1 Sovereign Consulting Inc. shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Sovereign Consulting Inc., its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Sovereign Consulting Inc. shall follow practices consistent with generally accepted professional and technical standards. Sovereign Consulting Inc. shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, Sovereign Consulting Inc. shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Sovereign Consulting Inc. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Sovereign Consulting Inc.'s failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the Sovereign Consulting Inc. to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Sovereign Consulting Inc. will not produce a work product that violates or infringes on any copyright or patent rights. Sovereign Consulting Inc. shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by Sovereign Consulting Inc. shall not in any way relieve Sovereign Consulting Inc. of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Sovereign Consulting Inc.'s services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Sovereign Consulting Inc. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Sovereign Consulting Inc.'s performance or failure to perform under this Agreement.

3.4 Sovereign Consulting Inc. shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Sovereign Consulting Inc.'s associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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The Project Manager, and all of the Sovereign Consulting Inc.'s associates and employees who will perform services on any specific project under this Contract, are subject to the review and approval of Delaware, where such approval shall not be unreasonably withheld.

3.5 On any specific project, the designation of persons for each position performing serviced called for by this Agreement is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Sovereign Consulting Inc. will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill a staff position or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Sovereign Consulting Inc. fails to make a required replacement within 30 days, Delaware may terminate this Agreement, or any Addendum hereto, for default. Upon receipt of written notice from Delaware that an employee of Sovereign Consulting Inc. is unsuitable to Delaware for good cause, Sovereign Consulting Inc. shall remove such employee from the performance of services and substitute, with Delaware's approval, in his/her place a suitable employee, the approval of which by Delaware shall not be unreasonably withheld.

3.6 Sovereign Consulting Inc. shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 Sovereign Consulting Inc. agrees that its officers and employees will cooperate with Delaware in the performance of services under any Addendum to this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 Sovereign Consulting Inc. has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 Sovereign Consulting Inc. will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule for a specific project may be included in the Addendum.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that Sovereign Consulting Inc. fails to complete the project or any phase thereof within the time specified in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in any Addendum to this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in the Addendum.

5. State Responsibilities.

5.1 In connection with Sovereign Consulting Inc.'s provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 Delaware agrees that its officers and employees will cooperate with Sovereign Consulting Inc. in the performance of services under this Agreement and will be available for consultation with Sovereign Consulting Inc. at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by Sovereign Consulting Inc. under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Sovereign Consulting Inc. by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to Sovereign Consulting Inc. It is understood that Delaware's representatives' review comments do not relieve Sovereign Consulting Inc. from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by Sovereign Consulting Inc. as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

Sovereign Consulting Inc. shall return any original data provided by Delaware.

5.6 Delaware shall assist Sovereign Consulting Inc. in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 Sovereign Consulting Inc. will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use Sovereign Consulting Inc.'s name, either express or implied, in any of its advertising or sales materials. Sovereign Consulting Inc. reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Sovereign Consulting Inc. for Delaware relating to the services to be performed hereunder

shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Sovereign Consulting Inc. shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Sovereign Consulting Inc. retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Sovereign Consulting Inc. retains title, whether individually by Sovereign Consulting Inc. or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall Sovereign Consulting Inc. be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Sovereign Consulting Inc. shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Sovereign Consulting Inc. prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Sovereign Consulting Inc. even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 ~~Sovereign Consulting Inc. warrants that its services will be performed in a good and workmanlike manner. Sovereign Consulting Inc. agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.~~

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Sovereign Consulting Inc. for Delaware in connection with the provision of the Services, Sovereign Consulting Inc. shall pass through or assign to Delaware the rights Sovereign Consulting Inc. obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 Sovereign Consulting Inc. shall indemnify and hold harmless Delaware, its agents, and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Sovereign Consulting Inc., its agents or employees, or (B) Sovereign Consulting Inc.'s breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Sovereign Consulting Inc. shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) Sovereign Consulting Inc. shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies Sovereign Consulting Inc. in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Sovereign Consulting Inc. will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Sovereign Consulting Inc. will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by Sovereign Consulting Inc.; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by Sovereign Consulting Inc.; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Sovereign Consulting Inc.'s opinion is likely to be, held to be infringing, Sovereign Consulting Inc. shall at its expense and option either (a) procure the right for

Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and Sovereign Consulting Inc.'s entire liability with respect to infringement.

10. Employees.

10.1 Sovereign Consulting Inc. has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Sovereign Consulting Inc. in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, Sovereign Consulting Inc. shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Sovereign Consulting Inc. shall be solely responsible for, and shall indemnify, defend, and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Sovereign Consulting Inc. acknowledges that Sovereign Consulting Inc. and any subcontractors, agents or employees employed by Sovereign Consulting Inc. shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 Sovereign Consulting Inc. shall be responsible for providing liability insurance for its personnel.

11.4 ~~As an independent contractor, Sovereign Consulting Inc. has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose.~~

12. Suspension.

12.1 Delaware may suspend performance by Sovereign Consulting Inc. under this Agreement, or any Addendum hereto, for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Sovereign Consulting Inc. at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Sovereign Consulting Inc. its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Sovereign Consulting Inc. shall not perform further work under this Agreement after the effective date of suspension. Sovereign Consulting Inc. shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by Sovereign Consulting Inc. for any cause other than the error or omission of the Sovereign Consulting Inc., for an aggregate period in excess of 30 days, Sovereign Consulting Inc. shall be entitled to an equitable adjustment of the compensation payable to Sovereign Consulting Inc. under this Agreement to reimburse Sovereign Consulting Inc. for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Sovereign Consulting Inc. is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay Sovereign Consulting Inc. that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Sovereign Consulting Inc. at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Sovereign Consulting Inc.'s default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Sovereign Consulting Inc. shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Sovereign Consulting Inc. assigned to the performance of the Agreement, or any Addendum hereto, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of Sovereign Consulting Inc. to fulfill contractual obligations it is determined that Sovereign Consulting Inc. has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and Sovereign Consulting Inc. provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to Sovereign Consulting Inc., terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Sovereign Consulting Inc. or any agent or representative of Sovereign Consulting Inc. to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this

Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against Sovereign Consulting Inc. it could pursue in the event of a breach of this Agreement by Sovereign Consulting Inc.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by Sovereign Consulting Inc. to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by Sovereign Consulting Inc., without prior written approval of Delaware.

15.3 Approval by Delaware of Sovereign Consulting Inc.'s request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Sovereign Consulting Inc. of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 Sovereign Consulting Inc. shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Sovereign Consulting Inc., its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the Sovereign Consulting Inc.'s request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

Sovereign Consulting Inc. and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and Sovereign Consulting Inc. with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 Sovereign Consulting Inc. may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, Sovereign Consulting Inc. shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Sovereign Consulting Inc. shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, nor any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 Sovereign Consulting Inc. covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Sovereign Consulting Inc. further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 Sovereign Consulting Inc. acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Sovereign Consulting Inc. recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Sovereign Consulting Inc. in breach of the Agreement, terminate the Agreement, and designate Sovereign Consulting Inc. as non-responsible.

20.6 Sovereign Consulting Inc. warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For

breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 Sovereign Consulting Inc. shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Sovereign Consulting Inc.'s performance and records pertaining to this Agreement at the Sovereign Consulting Inc. business office during normal business hours.

21. Insurance.

21.1 Sovereign Consulting Inc. must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. Sovereign Consulting Inc. must carry the following coverage depending on the type of service or product being delivered:

A. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

B. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

or

C. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

or

D. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others,

and

- F. Sovereign Consulting Inc. shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The Sovereign Consulting Inc. is an independent contractor and is not an employee of the State of Delaware.

Sovereign Consulting Inc. must carry (A), (E), and (F), and at least one of (B), (C), or (D), depending on the type of service or product being delivered.

- 21.2. Sovereign Consulting Inc. shall provide forty-five (45) days written notice of cancellation or material change of any policies.
- 21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.
- 21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, Sovereign Consulting Inc. hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Contract.

23. Surviving Clauses

The following clauses survive the termination of this Contract: Section 9 (fill in all others you wish to survive termination).

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of

the State of Delaware, except where Federal Law has precedence. Sovereign Consulting Inc. consents to jurisdiction and venue in the State of Delaware.

25. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

To Delaware: Timothy Ratsep
Program Administrator
DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720

To Sovereign Consulting Inc.: Douglas Janiec
Natural Resources Program Manager
Sovereign Consulting Inc.
50 West Welsh Pool Road, Suite 6
Exton, Pennsylvania 19341

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

Original on File

Witness _____

Date: 10/29/15

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Original on File

Name: David Small

Title: Secretary

Date: 10/29/15

SOVEREIGN CONSULTING INC.

Original on File

Witness _____

Date: 10/7/15

Original on File

Name: David J. Volz

Title: Vice President

Date: October 7, 2015





STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
391 LUKENS DRIVE
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600
FAX NO.: (302) 395 - 2601

November 2, 2015

Mr. William Burton
Program Manager
VERSAR
9200 Rumsey Road
Columbia, Maryland 20145

RE: Signed Contract #NAT-15375 Ecological Consulting Services

Dear Mr. Burton:

Enclosed please find a signed copy of Contract #NAT-15375 Ecological Consulting Services. The enclosed copy is for your records. Thank you for your interest in the contract and DNREC-SIRS looks forward to working with you on this contract. Should you have any questions please feel free to contact me at 302-395-2600.

Thank you,

Original on File

Environmental Scientist

Enclosure

MMP:vdh
MMP15098.doc
AD003 I B 1

Delaware's good nature depends on you!

Printed on
Recycled Paper

PROFESSIONAL SERVICES AGREEMENT
Contract No. #NAT-15375 Ecological Consulting Services

RECEIVED

OCT 12 2015

DNREC - SIRS

This Agreement ("Agreement") is entered into as of October 26, 2015 ("Effective Date") and will end on September 30, 2018, by and between the State of Delaware Department of Natural Resources and Environmental Control ("Delaware"), and Versar, a corporation, with offices at 9200 Rumsey Road, Suite 1, Columbia, Maryland 20145 ("Versar").

WHEREAS, Delaware desires to obtain certain professional services regarding Environmental Investigation and Remediation Services; and

WHEREAS, Versar desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Versar represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Versar agree as follows:

1. Services.

1.1 This Agreement is a multiple source contract for professional services. Versar is one of several firms that Delaware has entered into agreements with under Contract No. #NAT-15375 Ecological Consulting Services to provide professional services to DNREC, consisting of Environmental Investigation and Remediation Services, on specific projects. Entering into this Agreement entitles Versar to receive notices from Delaware during the Contract period when DNREC requires professional services on any specific project. The notice will request that Versar submit a proposal to Delaware for the professional services requested in the notice. The notice may be sent, at Delaware's discretion, to more than one firm under Contract No. #NAT-15375 Ecological Consulting Services. Versar's specific project proposal shall be based on the list of prices established as part of this Agreement. Delaware, at its discretion, will select a specific project proposal from one of the vendors that received the notice. If Versar's proposal is selected, Versar will be invited to enter into negotiations to conclude an agreement to provide professional services on the specific project. In the negotiations, Delaware may request that Versar use certain positions, or place certain individuals in the positions, to provide the professional services called for in the notice. If Delaware and Versar are able to reach an agreement on the project specific proposal, it shall be set forth in an Addendum which shall be attached to this Agreement and made a part hereof. As used hereinafter, the term "Agreement" shall include all Addenda entered into

hereunder, unless the two terms are used separately and the context indicates otherwise.

1.2 Versar shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.3 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and Versar. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Addenda for specific projects; (c) Delaware's request for proposals; (d) Specifications or Scope of Work; (e) Proposal; (f) Purchase Order; and (g) Special Instructions. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.4 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Versar shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Versar, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Versar for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.5 Versar will not be required to make changes to its scope of work that result in Versar's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from October 26, 2015 through September 30, 2018. This Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

2.2 Delaware will pay Versar for the performance of services on a specific project described in the Addendum for that project. Delaware has no obligation to pay Versar for any services under this Agreement unless an Addendum has been signed by Delaware and Versar for a specific project, and Delaware has issued a

purchase order for the services called for in the Addendum.

2.3 Each specific project Addendum entered into under this Agreement shall be the subject of a separate purchase order. It is expressly understood that the work defined in any Addendum to this Agreement must be completed by Versar and it shall be Versar's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. Delaware's total liability for all charges for services that may become due under any Addendum this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Versar for the specific project Addendum, including any amendments to the purchase order based on additional work required by any change order. Versar agrees that no work will be completed, nor costs incurred to be paid under this agreement, until a fully executed purchase order has been approved by the Department of Finance in Delaware's First State Financial system and authorization by Delaware.

2.4 Versar shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Versar a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Versar to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to Versar, 9200 Rumsey Road, Suite 1, Columbia, Maryland 20145.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Versar. If an Appendix specifically provides for expense reimbursement, Versar shall be reimbursed only for reasonable expenses incurred by Versar in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to Versar all damages, costs and expenses caused by Versar's negligence, resulting from or arising out of errors or omissions in Versar's work products, which have not been previously paid to Versar.

2.8 Invoices shall be submitted to:

DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720
ATTN: Project Manager

3. Responsibilities of Versar.

3.1 Versar shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Versar, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Versar shall follow practices consistent with generally accepted professional and technical standards. Versar shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, Versar shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Versar shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Versar's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the Versar to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Versar will not produce a work product that violates or infringes on any copyright or patent rights. Versar shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by Versar shall not in any way relieve Versar of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Versar's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Versar shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Versar's performance or failure to perform under this Agreement.

3.4 Versar shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Versar's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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The Project Manager, and all of the Versar's associates and employees who will perform services on any specific project under this Contract, are subject to the review and approval of Delaware, where such approval shall not be unreasonably withheld.

3.5 On any specific project, the designation of persons for each position performing serviced called for by this Agreement is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Versar will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill a staff position or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Versar fails to make a required replacement within 30 days, Delaware may terminate this Agreement, or any Addendum hereto, for default. Upon receipt of written notice from Delaware that an employee of Versar is unsuitable to Delaware for good cause, Versar shall remove such employee from the performance of services and substitute, with Delaware's approval, in his/her place a suitable employee, the approval of which by Delaware shall not be unreasonably withheld.

3.6 Versar shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 Versar agrees that its officers and employees will cooperate with Delaware in the performance of services under any Addendum to this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 Versar has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 Versar will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in

addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule for a specific project may be included in the Addendum.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that Versar fails to complete the project or any phase thereof within the time specified in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in any Addendum to this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in the Addendum.

5. State Responsibilities.

5.1 In connection with Versar's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 Delaware agrees that its officers and employees will cooperate with Versar in the performance of services under this Agreement and will be available for consultation with Versar at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by Versar under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Versar by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to Versar. It is understood that Delaware's representatives' review comments do not relieve Versar from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by Versar as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;

- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

Versar shall return any original data provided by Delaware.

5.6 Delaware shall assist Versar in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 Versar will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use Versar's name, either express or implied, in any of its advertising or sales materials. Versar reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Versar for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Versar shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Versar retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Versar retains title, whether individually by Versar or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall Versar be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Versar shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Versar prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Versar even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 Versar warrants that its services will be performed in a good and workmanlike manner. Versar agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Versar for Delaware in connection with the provision of the Services, Versar shall pass through or assign to Delaware the rights Versar obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 Versar shall indemnify and hold harmless Delaware, its agents, and

employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Versar, its agents or employees, or (B) Versar's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Versar shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) Versar shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies Versar in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Versar will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Versar will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by Versar; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by Versar; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Versar's opinion is likely to be, held to be infringing, Versar shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and Versar's entire liability with respect to infringement.

10. Employees.

10.1 Versar has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Versar in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, Versar shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Versar shall be solely responsible for, and shall indemnify, defend, and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Versar acknowledges that Versar and any subcontractors, agents or employees employed by Versar shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 Versar shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, Versar has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by Versar under this Agreement, or any Addendum hereto, for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Versar at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Versar its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Versar shall not perform further work under this Agreement after the effective date of suspension. Versar shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by Versar for any cause other than the error or omission of the Versar, for an aggregate period in excess of 30 days, Versar shall be entitled to an equitable adjustment of the compensation payable to Versar under this Agreement to reimburse Versar for additional costs occasioned as a result of such suspension of performance by Delaware based on

appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Versar is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay Versar that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Versar at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Versar's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Versar shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Versar assigned to the performance of the Agreement, or any Addendum hereto, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of Versar to fulfill contractual obligations it is determined that Versar has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and Versar provided in this section are in addition to any other rights and remedies provided by law or under this

Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to Versar, terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Versar or any agent or representative of Versar to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against Versar it could pursue in the event of a breach of this Agreement by Versar.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by Versar to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by Versar, without prior written approval of Delaware.

15.3 Approval by Delaware of Versar's request to subcontract or acceptance of or

payment for subcontracted work by Delaware shall not in any way relieve Versar of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 Versar shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Versar, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the Versar's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

Versar and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and Versar with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written

quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 Versar may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, Versar shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Versar shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, nor any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 Versar covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Versar further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 Versar acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Versar recognizes that if

they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Versar in breach of the Agreement, terminate the Agreement, and designate Versar as non-responsible.

20.6 Versar warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 Versar shall maintain all public records, as defined by 29 Del. C. § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 Del. C. Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Versar's performance and records pertaining to this Agreement at the Versar business office during normal business hours.

21. Insurance.

21.1 Versar must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. Versar must carry the following coverage depending on the type of service or product being delivered:

A. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

B. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

or

C. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

or

- D. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others,

and

- F. Versar shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The Versar is an independent contractor and is not an employee of the State of Delaware.

Versar must carry (A), (E), and (F), and at least one of (B), (C), or (D), depending on the type of service or product being delivered.

- 21.2. Versar shall provide forty-five (45) days written notice of cancellation or material change of any policies.
- 21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.
- 21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, Versar hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Contract.

23. Surviving Clauses

The following clauses survive the termination of this Contract: Section 9 (fill in all others you wish to survive termination).

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Versar consents to jurisdiction and venue in the State of Delaware.

25. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

To Delaware: Timothy Ratsep
Program Administrator
DNREC-SIRS
391 Lukens Drive
New Castle, Delaware 19720

To Versar: William Burton
Program Manager
Versar
9200 Rumsey Road, Suite 1
Columbia, Maryland 21045

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

Original on File

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
Original on File

Witness

[Signature]

Name: David Small

Title: Secretary

Date: 10/29/15

Date: 10/29/15

Original on File

VERSAR
Original on File

Witness

Mark Stunder
Director, Environmental Compliance Services
Environmental Services Group

[Signature]

Name: Kelby Ritter

Title: Sr. Contracts Administrator

Date: 10/6/2015

Date: 10/6/2015

