

## **STATE OF OKLAHOMA STATEWIDE CONTRACT WITH FREESE AND NICHOLS INC**

This State of Oklahoma Statewide Contract 0136 - Sampling - out of service petroleum underground storage tank (UST) sites ("Contract") is entered into between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") and Freese and Nichols Inc ("Supplier") and is effective as of the date of last signature to this Contract. The initial term of the Contract shall be for one (1) year with four (4) one-year options to renew.

### **Purpose**

The State is awarding this Contract to Supplier for the provision of The Office of Management and Enterprise Services (OMES), Central Purchasing Division, and the Petroleum Storage Tank Division ("PSTD") of the Oklahoma Corporation Commission ("OCC") are seeking a contract to assess for any potential hydrocarbon impact at PSTD- registered Temporarily Out of Use ("TOU") and Permanently Out of Use ("POU") facilities across the state. The site assessments will take place at these registered facilities incrementally over time as sites that meet the criteria for having an environmental site assessment completed are identified. The Contract is awarded as a Mandatory Statewide contract on behalf of the State of Oklahoma's Office of Management and Enterprise Services - Central Purchasing (OMES-CP). All state agencies and state affiliates may avail themselves of this contract., as more particularly described in certain Contract Documents. Supplier submitted a proposal with no exceptions, BAFO, vendor documents or confidentiality requests. This Contract memorializes the agreement of the parties with respect to the terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
  - 2.1. Solicitation, Attachment A;
  - 2.2. General Terms, Attachment B;
  - 2.3. Statewide Contract Terms, Attachment C;
  - 2.4. Intentionally Omitted, Attachment D;
  - 2.5. Portions of the Bid, Attachment E and

3. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.
4. Supplier agrees to accept pricing in accordance with the Petroleum Storage Tank Division's ("PSTD") Reasonable and Customary Unit Cost Rates. These rates shall be determined for each specific scope of work based on the questionnaire evidenced in Attachment A, Exhibit 2, which will be used to establish appropriate pricing. Examples of applicable pricing are also included in Attachment A, Exhibit 2 for reference.

### Signatures

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Contract and to bind their respective party thereto.

**STATE OF OKLAHOMA**  
**by and through the**  
**OFFICE OF MANAGEMENT AND**  
**ENTERPRISE SERVICES:**

**FREESE AND NICHOLS INC**

By:   
Amanda Otis (Mar 19, 2025 16:59 CDT)

By:   
Jennifer Wasinger (Mar 19, 2025 12:55 CDT)

Name: Amanda Otis

Name: Jennifer Wasinger

Title: State Purchasing Director

Title: Principal/Vice President

Date: Mar 19, 2025

Date: Mar 19, 2025

# **Attachment A**

## **Solicitation No. EV00000603**

### **Statewide Contract No. SW0136**

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract document.

#### **I. PURPOSE**

The Office of Management and Enterprise Services (OMES), Central Purchasing Division, and the Petroleum Storage Tank Division (“PSTD”) of the Oklahoma Corporation Commission (“OCC”) are seeking responses from qualified Suppliers to provide a contract to assess for any potential hydrocarbon impact at PSTD- registered Temporarily Out of Use (“TOU”) and Permanently Out of Use (“POU”) facilities across the state. The site assessments will take place at these registered facilities incrementally over time as sites that meet the criteria for having an environmental site assessment completed are identified.

The Contract is awarded as a Mandatory Statewide contract on behalf of the State of Oklahoma’s Office of Management and Enterprise Services - Central Purchasing (OMES-CP). All state agencies and state affiliates may avail themselves of this contract.

#### **1. Contract Term and Renewal Options:**

- 1.1. The initial Contract term, which begins on the effective date of the Contract, is one (1) year and there are four (4) one-year options to renew the Contract.
- 1.2. Statewide Contracts are moving to an annual auto-renewal format, instead of manual renewals. No annual renewal notices will be supplied by the State. This does not change any substantive terms and conditions of the executed Contract or any previously executed Amendments. Should either party decline to renew the Contract, a written termination notice shall be sent at least 30 days prior to the end of the Contract term.

#### **2. Contract Specifications**

- 2.1. Certain Contract requirements and terms are attached hereto as Exhibit 1 and incorporated herein.

#### **3. Solicitation Criterion:**

##### **3.1. The Bid will be evaluated using a best value criterion, based on the following:**

- i. Acceptance of the cost rates listed in the PSTD’s current “Reasonable and Customary Unit Cost Rates” for such work.
- ii. Compliance with specifications

### **3.2 Scope and Description:**

- i. The Bid Response shall show the ability of the Bidder to meet or exceed each requirement in Exhibit 1 Specifications.
- ii. The costs and all associated equipment, materials and professional hours needed to complete the required assessments and submit reports will be determined using the PSTD's current "Reasonable and Customary Unit Cost Rates" for such work. Refer to Exhibit 2 Examples of Reasonable and Customary Unit Cost Rates

## **II. STATE OF OKLAHOMA NON-NEGOTIABLE GENERAL TERMS**

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

### **1 Scope and Contract Renewal**

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State's prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier's performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Amendment. Further, any request for a price increase in connection with

a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.

- 1.4 Upon mutual agreement, the Parties may extend the Contract for ninety (90) days beyond a final renewal term. The Parties may to the extent allowable by law, choose to exercise subsequent ninety (90) day extensions.
- 1.5 Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

## **2 Contract Effectiveness**

- 2.1 Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until a proper purchase order has been issued.
- 2.2 Any Contract document shall be legibly written in ink or typed. All Contract transactions, and any Contract document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

## **3 Modification of Contract Terms and Contract documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Amendment. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

- 3.3** Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.4** Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, no Contract document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State.
- 3.5** To the extent any term or condition in any Contract document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

#### **4 Pricing**

- 4.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 4.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 4.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery

- 4.4** Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance
- 4.5** Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

## **5 Invoices and Payments**

- 5.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted This section shall not prohibit the payment of membership dues or payment for subscriptions to magazines, periodicals or books or for payment to vendors providing subscription services under 74 O.S. 85.44B.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 30 days, but shall not be deemed late until 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.

- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** If the Supplier accepts payment by Purchase Card they shall do so according to Oklahoma law.

## **6 Oklahoma Open Records Act**

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 et seq. Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required. Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) pricing provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.



## **7 Conflict of Interest**

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

## **8 State Shall Not Indemnify**

The State of Oklahoma cannot lawfully agree to indemnify a private contractor. The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State pursuant to Oklahoma Constitution article 10, Section 15, OAC 260:115-7-32(k)(3)(A) and Attorney General Opinion 2012-18.

## **9 Indemnification Coordination of Defense**

**9.1** In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

## **10 Termination for Funding Insufficiency**

**10.1** Notwithstanding anything to the contrary in any Contract document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and

obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

**10.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.

**10.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

## **11 Suspension of Supplier**

**11.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

**11.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

**11.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

**12 Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract. A determination that Supplier knowingly rendered an erroneous certification, in

addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

**13 Certification Regarding State Employees Prohibition From Fulfilling Services**

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

**14 Notices**

All notices, approvals or requests allowed or required by the terms of any Contract shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. Notice information may be updated in writing to the other party as necessary.

In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the email address set forth below.

Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall be delivered to the address below in addition to e-mail.

**If sent to the State:**

State Purchasing Director  
2401 North Lincoln Blvd., Second Floor  
Oklahoma City, Oklahoma 73105

**With a copy, which shall not constitute notice, to:**

Purchasing Division Deputy General Counsel  
2401 North Lincoln Blvd., Second Floor  
Oklahoma City, Oklahoma 73105

**15 Miscellaneous**

**15.1 Choice of Law and Venue**

Any claim, dispute, or litigation relating to the Contract documents, in the singular or in the aggregate, shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles. Pursuant to 74 O.S. §85.7(F), where Federal awards are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure ensure compliance with the terms of the Federal award. Venue for any action, claim, dispute, or litigation relating in any way to the Contract documents, shall be in Oklahoma County, Oklahoma. The State expressly declines any terms that minimize its rights under Oklahoma Law, including but not limited to, Statutes of Limitations.

**15.2 Employment Relationship**

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

**15.3 Failure to Enforce**

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract document shall not affect or waive

a subsequent breach of the same provision or a breach of any other provision in the Contract.

#### **15.4 Invalid Term or Condition**

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

#### **15.5 Severability**

If any provision of a Contract document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

#### **15.6 Section Headings**

The headings used in any Contract document are for convenience only and do not constitute terms of the Contract.

#### **15.7 Sovereign Immunity**

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State; provided, however, that the parties hereby agree that the doctrine of sovereign immunity does not apply to actions grounded in contract and therefore does not prohibit Supplier from pursuing claims arising under the Contract against the State and Customers.

### **15.8 Survival**

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

### **15.9 Gratuities**

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its authorized employee, agent, or another representative acting within the scope of their authority violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

### **15.10 Import/Export Controls**

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

## **ATTACHMENT B**

### **STATE OF OKLAHOMA NEGOTIABLE GENERAL TERMS**

This State of Oklahoma General Terms (“General Terms”) is a Contract document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

#### **1 Contract Order of Priority**

**1.1** Contract documents shall be read to be consistent and complementary. Any conflict among the Contract documents shall be resolved by giving priority to Contract documents in the following order of precedence:

- A.** any Amendment;
- B.** terms contained in this Contract document.
- C.** any Contract-specific State terms contained in a Contract document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D.** any applicable Solicitation;
- E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation, Contract or applicable law;
- F.** any statement of work, work order, or other mutually agreed Contract documents.

**1.2** If there is a conflict between the terms contained in this Contract document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Amendment.

## 2 Definitions

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 2.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 2.2 **Amendment** means any mutually executed, written modification to a Contract document or a written change, addition, correction or revision to a Solicitation.
- 2.3 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 2.4 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 2.5 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 2.6 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 2.7 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 2.8 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract document.
- 2.9 **Federal award** means the Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity
- 2.10 **Governmental Entity** means any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.



- 2.11 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 2.12 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 2.13 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 2.14 OAC** means the Oklahoma Administrative Code.
- 2.15 OMES** means the Office of Management and Enterprise Services.
- 2.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 2.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 2.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 2.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 2.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 2.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works

of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

### **3 Additional Pricing**

- 3.1** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.
- 3.2** Supplier shall have no right of setoff.
- 3.3** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.

## **4 Ordering, Inspection, and Acceptance**

- 4.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 4.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 4.3** Supplier shall deliver products and services on or before the required date specified in a Contract document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 4.4** Product warranty and return policies and terms provided under any Contract document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

**5 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation**

- 5.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a notice of cancellation and includes the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;

- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$2,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$2,000,000 combined single limit each accident;
- D.** If the Supplier will access, process, or store state data, then Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- E.** Additional coverage required in writing in connection with a particular Acquisition.

**5.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

**5.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

## **6 Compliance with Applicable Laws**

**6.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.

- B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
- C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
- D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
- E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
- G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
- H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at [Home | E-Verify](#);
- I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
- J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.

- 6.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at [Information Security Policy, Procedures, Guidelines \(oklahoma.gov\)](https://www.oklahoma.gov/ocfo/information-security-policy-procedures-guidelines) Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 6.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 6.4** In addition to compliance under subsection 6.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.
- 6.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 6.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 6.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 6.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.

- 6.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 6.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

## **7 Audits and Records Clause**

- 7.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 7.2** Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 7.3** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 7.4** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.



## **8 Confidentiality**

- 8.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer's prior express written permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.
- 8.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 8.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of

at least three (3) years, all notice-related costs and toll free telephone call center services.

- 8.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 8.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.
- 8.6** The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

## **9 Assignment and Permitted Subcontractors**

- 9.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 9.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said

corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

- 9.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.
- 9.4** All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.
- 9.5** Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

## **10 Background Checks and Criminal History Investigations**

Prior to the commencement of any services, performance of background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required. If required, the Supplier agree to provide the State with a description of the background check process to include any vendor's

used to gather information. Supplier will further attest that each employee and subcontractor providing services has passed the back ground check. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide verification of results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

## **11 Patents and Copyrights**

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property, copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

## **12 Indemnification**

### **12.1 Acts or Omissions**

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

## **12.2 Infringement**

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

## **12.3 Notice and Cooperation**

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended and where applicable the Attorney General of Oklahoma, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

#### **12.4 Limitation of Liability**

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

### **13 Termination for Cause**

- 13.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.
- 13.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 13.3** The State may terminate the Contract if the scope includes PR Vendor services and the Supplier, or Supplier's employee, violate the lobbying clause. PR Vendor services is defined to include a contract for public relations (PR), marketing or communication services. The State may immediately terminate the Contract with no more than 10-day notice under this section.
- 13.4** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

**13.5** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-1 is an example.

## **14 Termination for Convenience**

**14.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

**14.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

## **15 Suspension of Supplier**

**15.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails



to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

**15.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

**15.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

## **16 Certification Regarding State Employees Prohibition From Fulfilling Services**

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

## **17 Force Majeure**

**17.1** Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to

continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

**17.2** Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

**17.3** Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

## **18 Security of Property and Personnel**

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

## **19 Miscellaneous**

### **19.1 Transition Services**

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor

supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

## **19.2 Publicity**

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

## **19.3 Mutual Responsibilities**

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

## **19.4 Entire Agreement**

The Contract documents taken together as a whole constitute the entire agreement between the parties. The Contract documents include this Contract, any Amendments to this Contract, applicable Solicitation, and any successful bid as may be amended or limited through negotiation. No statement, promise,

condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract document shall be binding or valid. The Supplier's certifications, including any completed electronically, are incorporated by reference into the Contract.

## **ATTACHMENT C**

### **OKLAHOMA STATEWIDE CONTRACT TERMS**

#### **1. Statewide Contract Type**

- 1.1** The Contract is a statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.
- 1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

#### **2. Orders and Amendments**

- 2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Amendment to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Amendment to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.
- 2.4** The state agency or other authorized entity who places an order is the legally responsible party under a Contract dispute arising from the Order.

### **3. Termination**

All terms in this Contract relating to termination flow through to the Customer. A customer may terminate for funding insufficiency, cause or convenience any order or agreement made pursuant to this Contract. The termination must be done according to terms set forth in this Contract.

### **4. No Guarantee of Products or Services Required**

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

### **5. Contract Management Fee and Usage Report**

**5.1** Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Amendment.

**5.2** While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

**5.3** All Contract Usage Reports shall meet the following criteria:

- i.** Electronic submission in Microsoft Excel format to [strategic.sourcing@omes.ok.gov](mailto:strategic.sourcing@omes.ok.gov);

- ii. Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii. Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv. Contract quarterly reporting periods shall be as follows:
  - a. January 01 through March 31;
  - b. April 01 through June 30;
  - c. July 01 through September 30; and
  - d. October 01 through December 31.
  - e. Reports must include the following information:
  - f. Procuring entity;
  - g. Order date;
  - h. Purchase Order number or note that the transaction was paid by Purchase Card;
  - i. City in which products or services were received or specific office or subdivision title;
  - j. Product manufacturer or type of service;
  - k. Manufacturer item number, if applicable;
  - l. Product description;
  - m. General product category, if applicable;
  - n. Quantity;
  - o. Unit list price or MSRP, as applicable;
  - p. Unit price charged to the purchasing entity; and
  - q. Other Contract usage information requested by the State.

- 5.4** Payment of the contract management fee shall be delivered to the address below, or by setting up ACH. Payments must be received within forty-five (45) calendar days after the end of each quarterly reporting period.

Office of Management and Enterprise Services  
P.O. Box 248984  
Oklahoma City, Oklahoma 73124-8984

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

**Attachment E.1 - Section Seven**  
**Response to Specifications and Requirements**

**Solicitation No. EV00000603**  
**Statewide Contract No. SW0136**



# Work Plan

## Approach to Program Specifications

FNI understands the process PSTD requires to conduct site assessments for potential hydrocarbon impact at registered PST facilities. Purchase and work orders related to release investigation will be communicated to the appropriate Project Environmental Analyst (PEA) and will be submitted through the OCC Portal online. To follow the corrective action requirements listed in OAC 165:29-3, FNI will utilize licensed Oklahoma Water Resource Board (OWRB) drillers to complete any subsurface investigation involving soil borings and monitor well installations and use permitted waste facilities to dispose of any generated media (soil, groundwater) from field activities. Any non-unit costs that may be necessary to complete a purchase order will be communicated to the PEA. All work will be documented and provided to OCC as required. All invoices, reports and figures will be submitted through the OCC Online Portal unless otherwise specified by the PEA.

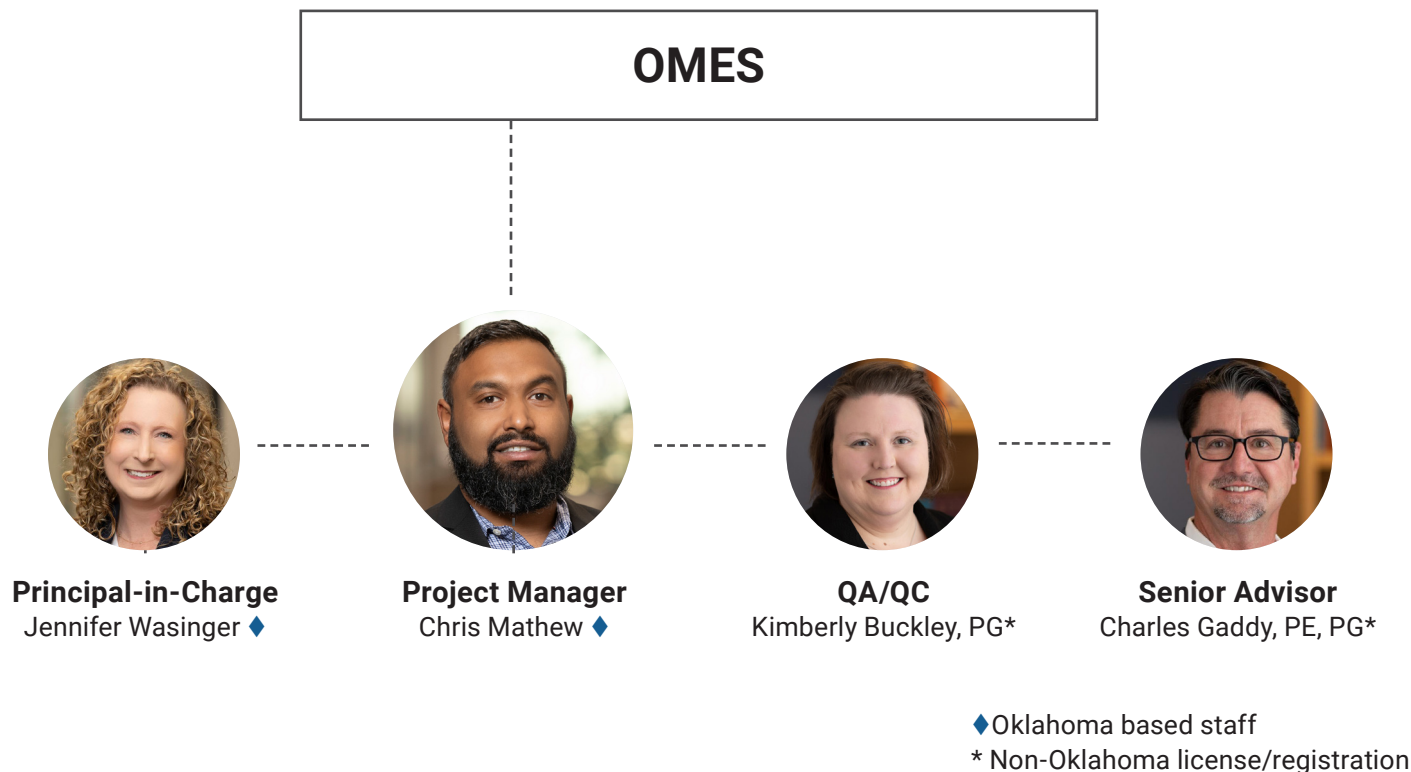
**FNI's Project Manager, Chris Mathew, is a licensed OCC Environmental Consultant and licensed Underground Storage Tank (UST) remover.** He has multiple years of experience working with the PSTD. His prior projects include conducting site monitoring and sampling, Oklahoma Risk Based Corrective Action (ORBCA) Tier I and Tier II assessments, and remediation work including, but not limited to, limited excavations to facilitate source removal and in situ chemical oxidation (ISCO) injections. Chris has also demonstrated that he is ready to respond to emergency releases and will communicate with the PEA and other involved parties to address and resolve complaints efficiently.

FNI will work with licensed OWRB drillers to complete soil borings and monitor well installations. Drillers and associated personnel have completed 40-hour Hazwoper and have extensive experience with drilling across Oklahoma. The drillers will utilize CME-75 Auger Truck Mounted Rigs and Geoprobe track mounted rigs for subsurface investigation. Borings are generally 8.25" in diameter but can be as compact as 2" in diameter. FNI will use a photo ionization detector (PID) to screen for volatile organic carbons every 0.5-1 foot of the recovered soil core. Monitor wells will be completed to OWRB standards, and a surge block will be used to develop the wells. FNI will have an oil/water interface probe to gauge the presence of free product as well as depth to water in each boring/monitor well. Purge water will be screened periodically using a YSI Multiparameter probe. FNI will collect groundwater samples through the use of disposable bailers. Sample collection kits will be acquired from an accredited laboratory and will be preserved on ice immediately after sample collection. FNI will notify OCC of any samples with chemical of concern concentrations above OCC actions levels and prepare a waste characterization form to be submitted to a permitted waste facility. Any material generated (soil and groundwater) during field work will be properly containerized for transport and disposal. A technical report will be prepared and submitted through the OCC online portal unless advised by the PEA.



*Duracoatings Drill Rig*

# Organizational Chart



## ADDITIONAL DEPTH OF BENCH RESOURCES

### Environmental Scientists

Lauren O'Donley ♦  
Cory Sullivan ♦  
Glen Adams ♦  
Spencer Sultemeier ♦

## SUBCONSULTANTS RESOURCES - REGIONALLY BASED OK-LICENSED

### Environmental Lab

Accurate Environmental  
Environmental Testing, Inc.

### Oklahoma Licensed Driller

Grateful Drilling  
Able Environmental Drilling

### Disposal Services

Waste Connections  
Ironclad Environmental Solutions  
Oklahoma Landfill



# Jennifer Wasinger

## Principal-in-Charge

### EXPERIENCE

31 years

### EDUCATION

MS, Environmental Science,  
Oklahoma State University

Bachelor of General  
Studies, Environmental  
Science, University of  
Kansas

### PROFESSIONAL AFFILIATIONS

Environmental Federation  
of Oklahoma

Oklahoma Floodplain  
Managers Association

Oklahoma Water  
Environment Association

Jennifer Wasinger has more than 30 years of experience in the environmental space including more than 20 years working with various Oklahoma environmental agencies. She provides senior leadership to FNI teams and clients regarding delivery of state and municipal projects. As the Principal-in-Charge, Jennifer will be responsible for delivering overall project performance.

Jennifer's more than 30 years of experience in this area will provide the OMES with not only an expert in the environmental field but also a senior leader that understands the needs of the project as well as the ability to support the FNI team to meet the needs of this project.

### RELEVANT PROJECT EXPERIENCE

#### **Oklahoma Refining Company Superfund Site - Gladys Creek | ODEQ | Senior Advisor**

FNI investigated the current conditions that led to erosion and related erosion and drainage processes, the development of conceptual alternatives, and the design of a replacement drainage system with erosion control considerations at the discharge location into Gladys Creek. Jennifer worked closely with ODEQ to understand the project needs and then bring in the appropriate experts to solve the problem. In this senior role, Jennifer pulled in a multi-disciplined team to solve the client's problem. Jennifer was able to understand the big-picture needs of the project and bring in the specialized resources to execute the project.

#### **General Environmental Services | City of Oklahoma City | Assistant Project Manager**

FNI provided stormwater quality and environmental compliance services for Will Rogers World Airport, Wiley Post Airport and Clarence E. Page Airport. The FNI team assisted with updating the SWPPPs for each airport to comply with the ODEQ Multi-Sector General Permit (MSGP) OKR05 for Stormwater Discharges from Industrial Facilities. Jennifer was the senior client interface on this project. In this role, Jennifer routinely met with the client to make sure

the projects were going well, coordinated with the FNI project manager on any client concerns and confirmed that resources were available as needed to execute the project.

#### **Lake Thunderbird Watershed Total Maximum Daily Load Data Analysis and Plan Update | City of Norman | Senior Advisor**

FNI is providing data analysis for the Lake Thunderbird Watershed Total Maximum Daily Load (TMDL) Compliance and Monitoring Plans update. FNI is providing data analysis and water quality modeling services to assist the City with the review of monitoring data obtained during the past five years to determine if compliance efforts and BMPs established in the first five years have met load reduction requirements as well as identify potential changes and update the TMDL Compliance and Monitoring Plans. As the senior-level client contact, Jennifer works with the city to understand the project needs and obtain the appropriate FNI resources to execute the project. Jennifer is able to understand the special needs of the project, any political or public concerns and work with the FNI team to provide the solution.



# Chris Mathew

## Project Manager

Chris Mathew is a Project Manager and Environmental Scientist at FNI's Oklahoma City office. He has a strong background in environmental consulting services. His skills come from extensive environmental field work and technical report writing.

### EXPERIENCE

8 years

### EDUCATION

MS, Environmental Science,  
University of Oklahoma

BS, Biology, University of  
Central Oklahoma

### REGISTRATION

Licensed Environmental  
Consultant, Oklahoma  
Corporation Commission  
#2173

Chris has professional experience providing CAD support and the production of a variety of environmental assessments, such as Phase I and II Environmental Site Assessments, Hazardous Materials Initial Site Assessments and Oklahoma Risk Based Corrective Action Tier 1A and 2 Reports. He is also an expert on environmental projects that include site assessment, UST release case management and hazardous waste disposal. Chris has also managed emergency response for UST projects such as addressing public complaints for suspected releases and vacuum extraction of impacted groundwater from utility manways.

### RELEVANT PROJECT EXPERIENCE

#### **Duracoatings Facility Chromium Delineation | ODEQ | Assistant Project Manager**

Chris is performing a chromium delineation at the Duracoatings facility in Oklahoma City on behalf of Oklahoma Environmental Quality. He communicated frequently with stakeholders to plan out field work to delineate chromium in groundwater. Six, 50-foot monitor wells were installed and sampled under the supervision of ODEQ personnel. Chris coordinated with stakeholders and contractors to verify that installing monitor wells and collecting groundwater samples proceeded smoothly. Additional activities included logging each boring, collecting soil samples for laboratory analysis, coordinating removal and disposal of Investigation Derived Waste (IDW), developing the report with maps, compiling lab analysis tables and boring logs and making recommendations. The initial assessment prompted additional shallow soil sampling and an additional round of groundwater sampling to be completed in the Spring of 2025.

#### **Elk Elevator Phase I and Phase II ESA | OCC | Assessment Manager**

FNI is performing a Phase I and Phase II ESA at the Elk Elevator brownfield site. Phase I includes a Ground Penetrating Radar survey, and Phase II includes subsurface investigation. Chris is tasked with coordinating and managing field work including boring installations,

collecting soil and groundwater samples and providing UST removal oversight. Additional activities included logging each boring, collecting soil samples for laboratory analysis, coordinating removal and disposal of IDW, developing the report with maps, compiling lab analysis tables and boring logs and making recommendations.

#### **Deep Rock Phase I ESA | OCC | Assistant Project Manager**

FNI is performing a Phase I and Phase II ESA at the Deep Rock site. Phase I includes a Ground Penetrating Radar survey, and Phase II includes a subsurface investigation. Chris is tasked with coordinating and overseeing boring installations to collect soil and groundwater samples, coordinating asbestos and lead based paint inspections, and managing the UST removal. He is also in charge of the disposal of generated soil and groundwater.

#### **2023/24 OKC Will Rogers International Airport Stormwater Monitoring | City of Oklahoma City | Environmental Scientist**

FNI is providing annual stormwater monitoring and compliance evaluation services for OKC Will Rogers International Airport. Chris conducted water sampling alongside his team members at the FNI OKC office for annual compliance sampling.





# Charles Gaddy PE, PG

## Senior Advisor

Charles Gaddy has been working in the environmental field since 1985 providing efficient and durable solutions to varied environmental scenarios. Charles is a licensed environmental engineer and licensed geologist, which provides broad insights and fosters effective management of multi-disciplinary teams. As a consultant, he has worked on projects ranging from clean construction to federal superfund sites.

He has conducted engineering design and review; soil, sediment and groundwater assessment and remediation; risk assessment and feasibility studies; regulatory compliance assessment and auditing; specification preparation, bid management and contract management; and hazardous waste management.

### EXPERIENCE

40 years

### EDUCATION

MS, Environmental and Water Resources Engineering, Vanderbilt University

MS, Geology, Vanderbilt University

BS, Geology, University of Southwestern Louisiana

### REGISTRATION

Professional Engineer, Oklahoma #21471

Professional Geoscientist, Texas #10001

### RELEVANT PROJECT EXPERIENCE

#### Harbin Drive Ghost Tank | City of Stephenville | Project Engineer

Charles reviewed an FNI prepared Release Determination Report for the tank removal activities and confirmation that underlying site soils were not impacted by leaks of petroleum products previously stored in the UST. The Release Determination Report was submitted to the Texas Commission on Environmental Quality (TCEQ), which issued a No Further Action Required letter for the facility based on the results that no elevated concentrations of petroleum hydrocarbons or heavy metals had been found at the site and the tank was properly recycled. Charles coordinated with the licensed UST contractor to verify proper disposal of tank wash water which was temporarily stored on site.

#### Oklahoma Refining Company Superfund Site - Gladys Creek | ODEQ | Project Engineer

FNI evaluated drainage structures that direct stormwater within an impounded area through a drop area inlet to a stormwater pipe that discharges into Gladys Creek. Charles provided environmental input into the investigation of the current conditions that led to the erosion and related erosion and drainage processes, the development of conceptual alternatives that did not exacerbate contaminant mobility, and the design of a replacement drainage system.

#### Star R Foam Remediation-Resident Project | Tarrant Regional Water District (TRWD) | Project Manager

FNI assisted TRWD with bid package development (including Plans and Specifications) used to procure the best-value contractor to remediate the site. Charles reviewed the existing assessment data and determined that a smaller volume of material could be removed. Charles determined that all waste from the site could be disposed as TX Class 2 waste, which resulted in significant costs savings. During site remediation, Charles performed as the senior RPR and provided field oversight of remediation activities. Charles provided responsive communication to the client and regulators regarding project progress, budgets and invoicing. He also managed the preparation of all contract deliverables. Charles was responsible for confirming the project budget was met and any change orders from the contractor were evaluated to verify they provided a benefit before being submitting the proposed change order to the client.



# Kimberly Buckley PG

## QA/QC

### EXPERIENCE

24 years

### EDUCATION

MS, Geology, University of New Orleans

BS, Environmental Management Systems, Louisiana State University

### REGISTRATION

Professional Geoscientist, Texas #10385

Kimberly Buckley is an FNI Principal, North Texas and Oklahoma Environmental Science Group Manager and a licensed Professional Geoscientist. Kimberly is responsible for performing QA/QC reviews on all project deliverables for her group. She has led a full range of environmental assessment projects from simple Phase II ESAs to complex Brownfield Assessment programs for clients.

Kimberly's experience includes ESAs, affected property assessments, waste classification and disposal, and preparation of spill prevention control and countermeasure plans. She is well versed in rules and regulations pertaining to contaminated site investigation, risk-based cleanup, closure, as well as property transactions. Kimberly is a member of the ASTM International E50 Subcommittee responsible for maintaining and updating industry standards related to environmental site assessments and environmental service.

### RELEVANT PROJECT EXPERIENCE

#### **Elk Elevator Phase I and Phase II ESA | OCC | Project Manager/Quality Control Reviewer**

FNI performed a Phase I and Phase II ESA at the Elk Elevator site. Phase I included a Ground Penetrating Radar survey and Phase II included a required tank removal. As Project Manager, Kimberly provided final quality reviews of the Phase I ESA prepared for the site. Environmental assessments documented recognized environmental conditions identified for the subject property in accordance with the EPA All Appropriate Inquiry Rule and ASTM Standard 1527 as well as the Phase II ESA and reviewed coordination with stakeholders on necessary next steps to address environmental concerns as well as tanks encountered at the site.

#### **Prairie View PST Environmental Services | ODOT | Project Manager/OCC Environmental Consultant**

FNI provided environmental services related to the closure of the Prairie View PST site that ODOT purchased as part of a roadway improvement project. Kimberly oversaw the installation of a monitoring well on the site and served as the OCC Environmental Consultant on the Suspicion of Release investigation.

#### **Harbin Drive Ghost Tank | City of Stephenville | Professional Geoscientist/QC Reviewer**

FNI encountered an abandoned UST in the utility right-of-way during construction of 3,300 linear feet of large diameter storm drain and box culvert for development of the Tarleton State campus. Kimberly coordinated with the City and project engineer to expedite removal of the tank from the ground. Kimberly provided technical quality reviews of the PST Program Release Determination Report and documentation of tank removal activities.

#### **Wallace Pump Station Petroleum Storage Tank Compliance | City of Garland | Project Manager/TCEQ Corrective Action Project Manager**

FNI provided professional environmental services associated with the assessment and closure of a release of petroleum hydrocarbons from an aboveground storage tank (AST) at the pump station facility. Kimberly oversaw a rapid response to the site to evaluate the petroleum hydrocarbon release after an emergency response contractor had responded to the site. Kimberly provided technical quality reviews to document removal of the released petroleum hydrocarbons and no remaining impacts or threats to human health or the environment.

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# Lauren O'Donley

## Environmental Scientist



Lauren O'Donley is an Environmental Scientist with experience in water quality and natural resources management. Before joining FNI, Lauren led the Beneficial Use Monitoring

Program for rivers and streams across Oklahoma. The U.S. EPA also contracted her for her National Rivers and Streams Assessment work. Lauren is knowledgeable about water quality testing, ecological surveys, overall environmental evaluations and reporting. Her experience includes Categorical Exclusions (CE), Phase I Assessments, Stormwater Pollution Prevention Plans (SWPPPs), Spill Prevention, Control and Countermeasures (SPCCs), and Total Maximum Daily Loads (TMDL).

**Education:** BS, Agriculture Science and Natural Resources, Oklahoma State University

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# Cory Sullivan

## Environmental Scientist



Cory Sullivan has been leading field efforts for environmental investigations, water quality assessments, and regulatory compliance. He is skilled in conducting surface

water, stormwater, groundwater, and wastewater sampling. His experience includes performing wetland delineations for civil projects, architectural assessments, pretreatment inspections, fish species identification and field services for remediation projects. Cory's adaptability allows him to assist firm technical experts in preparing noise assessments, Phase 1 ESAs, stream monitoring reports, annual environmental reports and public meeting materials for clients.

**Education:** BA, Environmental Sustainability, The University of Oklahoma

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# Glen Adams

## Environmental Scientist



Glen Adams is an Environmental Scientist with a strong background in biological services. These skills come from research in stream restoration and rainforest ecology. Glen has professional

experience providing GIS support and the production of a variety of environmental assessments (Phase I ESAs, Hazardous Materials Initial Site Assessments, Stormwater Pollution Prevention Plans, Environmental Condition of the Property reports). His environmental project experience includes Section 404 waters and wetland delineation, Section 404 permitting, ESAs, and Section 404 permitting for a roadway improvement and bank stabilization.

**Education:** BS, Environmental Science, Southern Nazarene University

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# Spencer Sultemeier

## Environmental Scientist



Spencer Sultemeier is an Environmental Scientist with a strong focus on sustainability. Based in FNI's Oklahoma City office, Spencer leverages his skills and knowledge to enhance

organizational programs by emphasizing excellence in sustainability, compliance, and safety. Spencer has experience working on water quality studies, Phase I ESAs, and NEPA related projects. He is also experienced in using ArcGIS Pro.

**Education:** BS, Environmental Studies, Utah State University

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# Project Experience

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## Elk Elevator Phase I and Phase II Environmental Site Assessment

### Oklahoma Corporation Commission

FNI performed a Phase I and Phase II ESA at the Elk Elevator site. The facility previously operated as a grain elevator and storage facility with fuel tanks underground. The facility has not operated as a grain facility for some time and was left vacant. The property was purchased by a nearby church, and the facility was entered into the OCC Brownfield program in 2023. FNI was hired to conduct Phase I, including an initial site assessment detailing the historic and current use of the property. A ground penetrating survey was conducted to prepare for further subsurface investigation. Based on the findings in the Phase I Assessment, a Phase II was recommended to determine if subsurface contamination is present. Phase II of this project required extensive fieldwork.

Project Manager Chris Mathew coordinated frequently with drillers and operators to verify that a call was made to Okie 811 to locate any public utilities on the property. Chris coordinated with the property owner and subconsultants/subcontractors to discuss any access limitations, such as locked fences and buildings, that were dealt with before work started to allow for prompt entry and timely completion of all fieldwork. Chris held a brief safety meeting before any field work started and he always had a site-specific health and safety plan available while on the project site. He worked with licensed OWRB drillers to install temporary borings utilizing a hollow stem auger. Soil cores from the HSA were screened using a photo ionization detector (PID), and soil samples were collected in areas based on screening observations. Concurrent with drilling and sampling, licensed asbestos and lead-based paint inspectors sample material in the buildings on site to reduce mobilization costs.

Chris sampled groundwater once drilling was complete using disposable bailers. The soil and groundwater samples were placed in an ice-filled cooler and hand-delivered to a local accredited laboratory along with a completed chain of custody. Once the laboratory released the analytical report, Chris reviewed the results and notified the PSTD of any samples that exceeded OCC action levels. Soil and groundwater that may be generated during fieldwork are characterized and disposed of at a permitted waste facility. Chris also managed the safe removal of underground storage tanks on site. Chris coordinated with heavy machinery operators including backhoe, track-hoe, and crane operators tasked with excavating the tank pit area and removing the UST to verify that everyone is as safe as possible while the tank pit is excavated. As the licensed UST remover, Chris was tasked with making sure the tanks are made inert, fire extinguishers are strategically placed, and all relevant forms are read and signed by the appropriate parties. Any changes to the scope of work that occurred during Phase I and Phase II were brought to the OCC's attention immediately.

### LOCATION

Oklahoma City, Oklahoma

### DATE COMPLETED

Summer 2024

### REFERENCE

Jeff Myers  
Program Manager  
405-522-2764  
jeffery.myers@occ.ok.gov

### RELEVANT EXPERIENCE

- Field Sampling Plans
- QAPPs
- Phase I and II ESAs
- OCC PST Division Coordination/Closure







## Deep Rock Phase I ESA

### Oklahoma Corporation Commission

FNI performed a Phase I and Phase II ESA at the Deep Rock site. The facility is located in Elmore City, Oklahoma and was historically a fuel service station. The facility has been out of service for some time and was entered into the OCC Brownfields program in 2023. FNI was hired to conduct a Phase I including an initial site assessment detailing historic and current use of the property. A ground penetrating survey was conducted to prepare for further subsurface investigation. Based on the findings in the Phase I Assessment, a Phase II was recommended to determine if subsurface contamination is present. Phase II for this project required extensive fieldwork.

Chris coordinated frequently with drillers and operators to verify that a call was made to Okie 811 to locate any public utilities on the property. Chris coordinated with the property owner and subconsultants/subcontractors to discuss any access limitations, such as locked fences and buildings, were dealt with before work started to allow for prompt entry and timely completion of all field work. Chris held a brief safety meeting before any field work started and he always had a site-specific health and safety plan available while on the project site. Chris worked with licensed OWRB drillers to install temporary borings utilizing a hollow stem auger. Soil cores from the hollow stem auger are screened

using a photo ionization detector, and soil samples are collected in areas based on screening observations. Concurrent to drilling and sampling, licensed asbestos and lead-based paint inspectors sample material in the buildings on site to reduce mobilization costs.

Chris sampled groundwater once drilling was completed using disposable bailers. The soil and groundwater samples were placed in an ice-filled cooler and hand delivered to a local accredited laboratory along with a completed chain of custody. Once the laboratory released the analytical report, Chris reviewed the results and notified the PSTD of any samples that exceeded OCC action levels. Soil and groundwater that may be generated during field work is characterized and disposed of at a permitted waste facility. Chris also managed the safe removal of underground storage tanks on site. Chris coordinated with many operators to verify that everyone was as safe as possible while the tank pit is excavated. As the licensed UST remover, Chris was tasked with making sure the tanks are made inert, fire extinguishers are strategically placed, and all relevant forms are read and signed by the appropriate parties. Any changes to the scope of work that may occur during Phase I and Phase II were brought to the OCC's attention immediately.

### LOCATION

Oklahoma City, Oklahoma

### DATE COMPLETED

Fall 2024

### REFERENCE

Jeff Myers  
Program Manager  
405-522-2764  
[jeffery.myers@occ.ok.gov](mailto:jeffery.myers@occ.ok.gov)

### RELEVANT EXPERIENCE

- Field Sampling Plans
- QAPPs
- Phase I and II ESAs
- OCC PST Division  
Coordination/Closure



# Prairie View Store Petroleum Storage Tank Closure

## ODOT

FNI provided environmental services related to the closure of the former Prairie View Store site near Stratford. ODOT acquired the former Prairie View Store site for roadway improvements along the adjacent US-177 and SH-29 intersection. During PST and dispenser island removal, slightly elevated concentrations of petroleum hydrocarbons were found. Based on the tank removal results, FNI installed a groundwater monitoring well to investigate the OCC Suspicion of Release.

FNI coordinated with licensed OWRB drillers to install the monitoring well utilizing a CME-75 rig with hollow stem augers. The technical report included

a narrative of field activities, boring logs, potentiometric maps, chemical of concern concentration maps, OWRB well completion reports, and recommendations on the next course of action.

Groundwater results indicated that groundwater impacts were not present at the underlying site. FNI's licensed OCC Environmental Consultants, Kimberly Buckley and Christopher Mathew coordinated with ODOT and the OCC to obtain closure for the site and permanently plug and abandon the monitoring well onsite. FNI's services were completed as part of the OCC Indemnity Fund for reimbursement.

## LOCATION

Oklahoma City, Oklahoma

## DATE COMPLETED

Spring 2024

## REFERENCE

Jeri Edmondson  
Hazardous Materials  
Program Manager  
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## RELEVANT EXPERIENCE

- OCC Licensed Environmental Consultants
- Field Sampling Plans/ QAPPs
- Suspicion of Release Reporting
- Oklahoma RBCA Closure





# Duracoatings Facility Chromium Delineation

## Oklahoma Department of Environmental Quality

FNI is assisting the ODEQ with a groundwater investigation for the Duracoatings Holdings, LLC project site. The purpose of the project is to delineate chromium in groundwater using monitor wells. A review of the site history and background was necessary to prepare a robust and comprehensive plan for this project. FNI frequently communicated with ODEQ personnel and stakeholders to plan our fieldwork in accordance with a site-specific field sampling plan. The site was surveyed before any work was conducted to verify that no private utility lines were affected by construction activities. All work was completed under the supervision of Duracoatings and ODEQ personnel. Monitor wells were installed using a hollow stem auger attached to a CME-75 truck-mounted rig. While installing the monitor well, OWRB licensed well drillers provided five-foot soil cores to FNI personnel to be analyzed and logged.

Groundwater samples were collected using disposable bailers once the monitor wells were surveyed, developed and gauged. The groundwater samples were collected and analyzed for total chromium by National Environmental Laboratory Accreditation Program (NELAP) accredited laboratory, Environmental Testing, Inc. Soil cuttings and purge water generated from drilling and groundwater sampling were properly characterized and disposed of at a permitted disposal facility. Once fieldwork was completed, a technical report was prepared to document field activities and laboratory data. The report included a narrative of field activities, boring logs, potentiometric maps, chemical of concern concentration maps, OWRB well completion reports, and recommendations on the next course of action. Based on the analytical report, FNI recommended additional vertical and lateral delineation. The report was submitted and reviewed by ODEQ.

Additional delineation and another round of groundwater sampling were agreed upon to meet ODEQ's recommendations. FNI has submitted a proposal to ODEQ to continue delineation by collecting shallow soil samples using a hand-auger between 18-36 inches below the ground surface in areas of concern for additional lateral delineation. FNI will also continue with another round of groundwater sampling and investigate the presence of an old septic system on site to potentially sample for sediment and water. This project is ongoing; additional fieldwork is expected to be completed in spring 2025.

### LOCATION

Oklahoma City, Oklahoma

### DATE COMPLETED

Ongoing

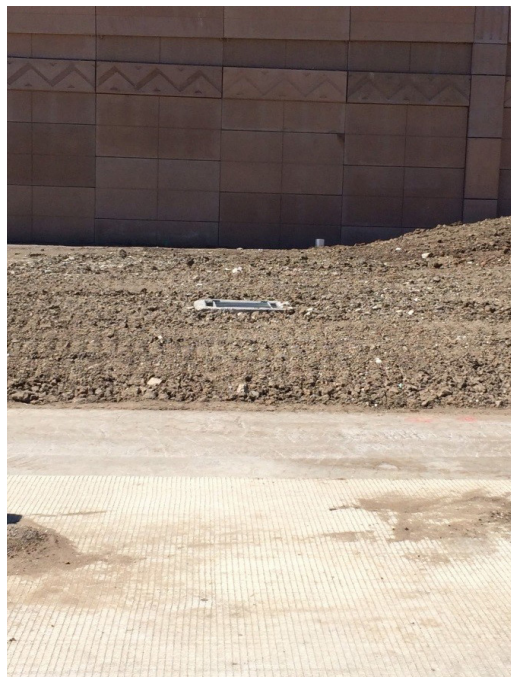
### REFERENCE

Amy Brittain  
Environmental Programs  
Manager  
405-702-5157  
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### RELEVANT EXPERIENCE

- Field Sampling Plans
- QA Project Plans
- Monitor Well Installation
- Soil and GW Sampling
- Chemical of Concern Delineation





# Chisholm Trail Parkway Ghost Tank Removal

## North Texas Tollway Authority

FNI was responsible for overall coordination of environmental issues between the construction contractor, design team and North Texas Tollway Authority (NTTA) during construction of Section 2 of the Chisholm Trail Parkway project. This section of the Chisholm Trail Parkway project contained significant legacy pollution issues due to the project's proximity to a large rail yard, multiple former leaking PST sites, and other contamination areas.

FNI assisted NTTA with contaminated soil management relating to the discovery of "ghost" USTs. Several "ghost" tanks were encountered in the project R/W during construction that required proper tank removal and documentation procedures. FNI personnel collected soil samples to determine whether a release had occurred in the UST area of concern. The soil sample was analyzed for chemicals of concern including Volatile Organic Compounds (VOCs; benzene, toluene, ethylbenzene, and xylenes) Total Petroleum Hydrocarbons (TPH), and Heavy Metals. Sample results were compared to TCEQ action levels to determine any impact from USTs. A detailed historical review of the project area included correspondence with TCEQ to assess past and present use of the project area and vicinity. Petroleum Storage Tank databases from TCEQ were also examined to provide details on site history and prior use. FNI provided oversight for removal activities and prepared proper petroleum storage tank removal documentation to submit to the TCEQ PST program. These activities were conducted expeditiously to prevent delays in the overall construction schedule.

### LOCATION

Fort Worth, Texas

### DATE COMPLETED

06/2014

### REFERENCE

Mike Dillow  
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214-440-3600  
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### RELEVANT EXPERIENCE

- Environmental Oversight During Construction
- Ghost Tank Removal
- Linear Transportation

**Attachment E.2 - Section Eight  
Pricing**

**Solicitation No. EV00000603  
Statewide Contract No. SW0136**

# Pricing

FNI acknowledges PSTD's current "Reasonable and Customary Unit Cost Rates" as provided in Exhibit 2 of the RFQ. For each task order received, FNI will propose a cost in accordance with the PSTD's current "Reasonable and Customary Unit Cost Rates" as issued by the OCC PSTD. Travel expenses will be determined in the same manner.