

CONTRACT FOR CONSULTING SERVICES

This contract for consulting services for Brownfields development projects environmental consulting services ("Contract") is entered into this 15TH day of AUGUST, 20 23 by and between The City of Oklahoma City, a municipal corporation ("City"), and Summit Holdings, Inc. dba Oklahoma Environmental Services, Inc. ("Consultant").

WITNESSETH:

PROJECT NO. MC-0732-A BROWNFIELDS DEVELOPMENT PROJECTS ENVIRONMENTAL CONSULTANT SERVICES

WHEREAS, the City intends to engage the services of the Consultant to assist City staff in preparing site assessment and remediation documents related to Brownfields redevelopment projects which receive assistance from the City's Brownfields Program funds and which may include Brownfields Cleanup Revolving Loan Funds, Community-wide Hazardous Assessment Grants and Site-Specific Hazardous Substance and Cleanup Grants; and

WHEREAS, the Consultant shall provide professional services for the project in accordance with this Contract, including the scope of work incorporated herein and as set forth in Exhibit A attached hereto; and

WHEREAS, the Consultant shall comply with all Federal Brownfield requirements, including but limited to those described in Exhibit E, incorporated herein by reference, for any clauses included in this contract which conflict with Federal requirements, the Federal requirements shall supersede; and

WHEREAS, the Consultant has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects, engineers and planners adopted by the City Council on July 23, 1974, amended on December 31, 1974, February 21, 1978, January 22, 1980, and November 18, 1986, which Resolution, with its amendments, is made a part of this Contract by reference.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the project, the parties agree to the following:

1. **Definitions.** All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the context clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

A.	<i>Beneficiary Trusts</i>	Any public trust of which the City of Oklahoma City is a beneficiary.
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- B. *City* The City of Oklahoma City, a municipal corporation, wherein the term “City” appears in this contract, the same shall also apply (as applicable) to any of the City’s Beneficiary Trusts.
- a. The City of Oklahoma City Planning Department’s Brownsfields Program Manager (Chris Varga – 297-1639) or the Brownfields Coordinator (Amanda Alewine- 297-1766)
- C. *City Engineer* The officer of the City in charge of engineering, construction and maintenance contracts on public rights-of-way, on public lands and capital improvement projects.
- D. *Term of Contract* The term of this Contract shall run from the date of execution through June 30, 2026.

2. **Professional Services - Basic.** The Consultant is hereby engaged and employed by the City to perform in accordance with good consulting practices and in the best interest of the City all of the work as set out herein and including Exhibit A, which is attached hereto and incorporated as a part of this Contract, including but not limited to the following:

- A. Phase I/II Environmental Site Assessments (ESAs)
B. Phase III Cleanup Plans
C. Public Meetings
D. Cleanup Oversight
E. Reuse Vision
F. Reuse Assessment

3. **Compensation.** The City agrees to pay the Consultant, as compensation for professional services listed in Exhibit A – Scope of Work attached hereto and incorporated herein, at the rates outlined in Exhibit B – Compensation.

4. **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the City unless such work or service is first approved in writing by the City’s Brownsfields Coordinator.

5. **Payments.**

- A. Payment of claims for incremental work completed on each task may be submitted. Invoices for the amount and value of the work and services performed by the Consultant shall be submitted monthly to the City and shall meet the standards of quality as established under this Contract. The City agrees to pay the Consultant, as compensation for such consulting services as listed herein, an amount equal to the billing rates shown in Exhibit B – Compensation below. The invoices shall be prepared and submitted by the Consultant and be accompanied by all supporting data

required by the City. Payment of any invoice for any work or services may not be deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the City or any obligation of the Consultant should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract. Surveyors or other professional consultants engaged for the normal structural, electrical or mechanical engineering services shall be billed to the City by the Consultant at the net cost thereof.

- B. The Consultant shall present monthly invoices to the City for compensation and payment. The City shall review the invoice for payment. Should the City question or request additional documentation or disapprove all or a portion of any invoice, the Consultant will be notified so that it may provide additional documentation sufficient to permit the invoice and claim to be paid, in whole or in part.
- C. Final payment shall not be deemed to waive any rights or obligations of the parties to this Contract.

6. **Indemnity.** The Consultant will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Consultant is not otherwise legally responsible.

The Consultant must indemnify the City and participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Consultant and any person or entity for which the Consultant is legally responsible are adjudicated liable.

7. **Insurance.** Prior to approval of this contract, the Consultant shall obtain insurance coverage as provided below. The Consultant must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and its participating trusts on a timely basis if requested by City staff.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its participating trusts. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. Additional Insureds: All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the City and its participating trusts are named additional insureds without reservation or restriction.

All insurance coverage of the Consultant shall be primary to any insurance or self-insurance program carried by the City and its participating trusts.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Subrogation as to any additional insured shall be waived.

- B. Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Consultant is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Consultant's deductible is different than declared, then the City and its participating trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Consultant's self-insured retention.

- C. Policy Limits: The insurance coverage and limits required of the Consultant under this Contract are designed to meet the minimum requirements of the City and its participating trusts. Such coverage and limits are not designed as a recommended insurance program for the Consultant. The Consultant alone shall be responsible for the sufficiency of its own insurance program. Should the Consultant have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Consultant should seek professional assistance.

Except for professional liability insurance, all policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Consultant shall also provide tail coverage that extends a minimum of two years from the expiration of this Contract.

The minimum aggregate limits of such insurance policies and continuing coverage shall be:

- (1) Worker's Compensation and Employer's Liability Insurance. The Consultant shall provide and maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma

and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the Consultant shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Consultant. In the event any class of employees engaged in work performed under the Contract or at the site of the Project is not protected under such insurance heretofore mentioned, the Consultant shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.

- (2) Commercial General Liability Insurance. The Consultant shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (3) Automobile Liability Insurance. The Consultant shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (4) Professional Liability Insurance. The Consultant shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City.

- D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Consultant authorizes the City and its participating trusts to confirm all information so furnished as to the Consultant's compliance with its bonds and insurance requirements with the Consultant's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Consultant shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its participating trusts. The City and its participating trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its participating trusts. The City and its participating trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit, the Consultant shall immediately notify the City and its participating trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its participating trusts request a written statement from the insurance

company(s) as to any impairments to or reduction of the aggregate limit, the Consultant hereby agrees to promptly authorize and have delivered to the City and its participating trusts such statement.

- F. Duration of Coverage. All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion and formal acceptance of the Project by the City and its participating trusts. The Consultant shall maintain in full force in effect the required professional liability insurance stated above during this Contract and for a period of two (2) years after the final, formal acceptance of this Project by the City and its participating trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

- G. The Consultant and its insurer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Consultant is not otherwise legally responsible.

The Consultant and its insurer must indemnify the City and participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Consultant and any person or entity for which the Consultant is legally responsible are adjudicated liable.

8. Termination for Convenience. The City may terminate this Contract, in whole or in part, for the City's convenience. The City may terminate by delivery of a notice to the Consultant, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Consultant shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), upon payment for work performed, deliver to the City all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for convenience by the City, the City shall pay the Consultant for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by any not to exceed amounts set out in this Contract.

The rights and remedies of the City provided in this paragraph shall be in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract.

9. **Stop Work.** Upon notice to the Consultant, the City may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of paragraph "Indemnity" and/or "Insurance" of this Contract. In the event the City issues a stop work order to the Consultant, the City shall provide a copy of such stop work order to the Construction Contractor.
10. **Notices.** All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the City:

The City of Oklahoma City
Department of Public Works
420 West Main Street, Seventh Floor
Oklahoma City, Oklahoma 73102
Attn: Eric J. Wenger, P.E., Director of Public Works/City Engineer
Phone Number: (405) 297-2581 Fax Number: (405) 297-2117

And:

The Oklahoma City Brownfields Program
Planning Department
Attn: Amanda Alewine, Brownsfield Coordinator
420 West Main Street, 9th Floor
Oklahoma City, OK 73102

To the Consultant:

Summit Holdings, Inc. dba Oklahoma Environmental Services, Inc.
2424 N Kelley Avenue
Oklahoma City, Oklahoma 73111
Attn: Deanna Atkinson, President
Phone Number (405) 605-1720 ext.100

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

11. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Consultant shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Contract.

12. **Records and Accounts.** During the term of this Contract and continuing for a period the longer of five (5) years after the final acceptance of the completed project by the City, or until the final resolution of any outstanding disputes between the City and the Consultant or the contractor(s) on the project, the Consultant shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the City subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract. The Consultant shall maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Consultant shall, upon request by the City, permit periodic audits by the City and the City's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the City and Consultant. Agreement as to the time and place for audits may not be unreasonably withheld.
13. **Reporting to the City.** The Consultant shall provide reports as directed by the City.
14. **Prohibition Against Collusion.** The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Contract. The Consultant further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In addition, the Consultant must execute the Non-Collusion Affidavit, attached as Exhibit C, prior to the effective date of this Contract.
15. **Sub-consultant, Sub-contractor or Employee Conflict of Interest.** Consultant shall include language in all agreements with Consultant's employees, sub-consultants or subcontractors on this project that said individuals shall not contract with, work for, or otherwise assist any potential bidder to do any project-related work for a bidder which may in any way be (or construed to be) a conflict of interest. The Consultant shall require all employees, sub-consultants or sub-contractors engaged by the Consultant to advise the City of any business relationship (formal or otherwise) which may pertain directly or indirectly to this project and/or may in any way be (or construed to be) a conflict of interest. The Consultant shall also notify the City of any such business relationship and/or conflict of interest. Any conflict of interest discovered by the City may be cause for rejection of the bid in question and/or cancellation of the Consultant's contract.
16. **Work Orders.** The Consultant shall proceed with the work and/or services for this Contract upon receipt of direction from the City's Brownfields Coordinator (a project-specific work order shall be written upon receipt from the Consultant of a project proposal, time for completion, and estimate of cost for services to be performed). Upon receipt of a directive from the Brownfields Coordinator, the Consultant shall identify the issues to be addressed, outline the service activities potentially required, provide an estimated time for completion, and forward an electronic mail (e-mail) to the Brownsfields Coordinator that addresses the

activities (including a requirement to estimate labor hours or costs). The Brownfields Coordinator (or his designated representative/Project Manager (PM) shall provide a response of concurrence/approval and the Consultant shall address the activity required.

Additionally, the Consultant may independently identify activities that require attention and shall notify the Brownfields Program of such activities but will not proceed with those activities until authorization has been received from the Brownfields Coordinator. d.

If the Consultant cannot perform the work and/or services within the time provided, and upon the submission by the Consultant of a request in writing to the City, indicating the length of extension required to perform a task, the Brownfields Coordinator may grant an extension of time. The request from the Consultant shall state the reason for the extension request, along with evidence showing that the Consultant is unable to complete this work in the time specified in the work order for reasons beyond its control. The Consultant is hereby prohibited from claiming damages for delays and extensions of time.

17. **Ownership of Documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the City and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Consultant. Reuse of said documents by the City shall be at the City's risk and responsibility and not that of the Consultant. The parties may use any portions of said documents at their own risk and responsibility.
18. **References Not Incorporated.** The use of language or definitions from the Federal Acquisition Regulations, the ("FAR"), the American Institute of Architects ("AIA") or any other publication, is not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
19. **Standard of Care.** In providing the work and services herein, the Consultant shall maintain during the course of this Contract the industry-accepted standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Consultant shall require all of its consultants, by the terms of its consultants' contracts, to provide services at the same industry-accepted standard of reasonable care, skill, diligence and professional competence required of the Consultant.
20. **Backup Required.** In accordance with good consulting practices, the Consultant must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI, records, reports, documents (collectively referred to as "data") in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively "loss"), the Consultant must timely recreate all data within the original time frame of the consultant contract at its sole cost. No extensions or additional time will be granted the Consultant for loss of data. No additional payment or reimbursement will be made to the Consultant for loss of data. The Consultant will be responsible for any and all costs, expenses, or lost opportunities incurred by The City,

Trust, and construction contractor resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.

21. **Sub-consultants.** The Consultant shall submit for approval by the City, prior to their engagement, a list of any sub-consultants or subcontractors the Consultant intends to engage to perform work and/or services related to this Contract. Such approval shall not be unreasonably withheld. The Consultant shall notify the City and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors.
22. **Nondiscrimination.** In connection with the performance of work and/or services under this Contract, the Consultant agrees as follows:
 - A. The Consultant shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Consultant shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Consultant shall agree to post, in conspicuous places, Exhibit D.
 - B. In the event of the Consultant's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the City. The Consultant may be declared by the City ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Consultant.
 - C. The Consultant agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract. The Consultant shall also execute the nondiscrimination certificate, attached and incorporated as Exhibit D, prior to the effective date of this Contract.
23. **Assignment.** Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Consultant to provide professional and personal services to the City, the parties agree that the Consultant may not assign its obligations, rights or interest in this Contract except as set forth in paragraph "Termination for Default" subparagraph B.
24. **Termination for Default.** The City may cancel this Contract in whole or in part, for failure of the Consultant to fulfill or promptly fulfill its obligations under this Contract.
 - A. After due notice and thirty (30) days within which to correct the default, this Contract may be terminated by either party for default upon fourteen (14) days written notice

should the other party fail substantially to perform in accordance with the Contract terms through no fault of the party initiating the termination.

- B. If this Contract is terminated by reason of a default of the Consultant prior to the completion of this project, regardless of the reason for said termination, the Consultant shall immediately assign to the City any contracts and/or agreements relative to this project entered into between the Consultant and its subcontractors and sub-consultants, as the City may designate in writing and with the consent of the subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the City, the City shall only be required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Consultant from and after the date of such assignment to and acceptance by the City and on the same terms as approved by the City herein. All sums claimed by such subcontractors or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the City shall constitute a debt between the Consultant and the affected subcontractors or sub-consultants, and the City shall in no way be deemed liable for such sums. The Consultant shall include this provision and the City's rights and obligations hereunder in all agreements or contracts entered into with the Consultant's subcontractors and sub-consultants.
 - C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph "Indemnity" or "Insurance" of this Contract.
25. **Time Is of the Essence.** Both the City and the Consultant expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the City to timely object to the time of performance shall not waive any right of the City to object at a later time.
26. **No Damage for Delay.** No payment, compensation or adjustment of any kind (other than an approved extension of time) shall be made to the Consultant for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Consultant shall make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
27. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
28. **Entire Agreement.** This Contract, including its Exhibits and any other written documents or certificates incorporated herein by reference, expresses the entire understanding of the City and the Consultant concerning the Contract. Neither the City nor the Consultant has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.

29. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the City and the Consultant. In the event the Consultant's scope of work is increased or changed so as to materially increase the need for consulting services in excess of the not to exceed total compensation, the Consultant may seek to amend this Contract.
30. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
31. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
32. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
33. **Survival of Representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
34. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
35. **Venue of Actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the District Court of Oklahoma County.
36. **Effective Date.** The effective date of this Contract shall be the date of execution of this contract by the City.
37. **Term of Contract.**
- A. This Contract authorizes the City Engineer to issue Work Orders under this Contract during the contract term as provided herein and the term of this Contract will be from the effective date through June 30, 2026, plus such extended time as necessary until all Work Orders issued during the contract term are complete.
 - B. The City may issue Work Orders under this Contract at any time during the contract term.
 - C. The Consultant will provide such services as set forth in any Work Order issued under this Contract and this Contract will be deemed extended for such extended time as may be necessary for the completion of services set forth in any Work Order issued during the contract term under this Contract.

- D. If this Contract is extended for completion of any Work Order, upon completion of all the Work Orders issued under this Contract, the City Engineer will issue a notice to the Consultant denoting the termination of this Contract and any extended time.
- E. The Consultant must provide such services and comply with this Contract until expiration of the contract term or through any extended time, if any, until notification of termination of this Contract from the City Engineer, whichever is later.
- F. The City will not be obligated to pay the Consultant under any Work Order (including any services, expenses, and additional services) until the funds have been encumbered. Any Work Order must not exceed the available funds for the year in which the Work Order was issued. Any extended time to complete the Work Order will not change the available funds for the year in which the Work Order was issued.
- G. If the City should need any additional services or a change of the scope of services in any Work Order issued during the contract term, a new separate Work Order must be issued under a separate contract or an amendment to this Contract. An extended time will not extend the authorization to issue a new Work Order under this Contract after the expiration of the contract term.

38. Local Business Utilization Report. On December 22, 2020, the City Council approved and re-established the Small and Disadvantaged Local Business Utilization (LBU) Program. The program encourages and promotes the use of small and disadvantaged local business subcontractors on public construction contracts. The goal is to provide assistance, guidance, and opportunities for small and disadvantaged local businesses to work on City projects.

The Engineer agrees to submit a Small and Disadvantaged Local Business Utilization ("LBU") Report to the City within fourteen (14) days of the issuance of the Notice to Proceed, to include the following information:

- A. A list identifying each of its subconsultants or subcontractors;
- B. The location of the principal place of business of each subconsultant or subcontractor;
- C. The status of each of its subconsultants and subcontractors, and which class of disadvantaged business; local, small, disadvantaged, minority, etc.
- D. The general scope of work to be performed by each subconsultant or subcontractor; and
- E. The dollar amount of each subcontract.
- F. The tools and/or organizations used to locate and contact these businesses.

The Engineer further agrees to submit to the City a monthly report identifying the scope of work and amount of payments made to each subconsultant or subcontractor for the preceding month on a form provided by the City.

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IN WITNESS WHEREOF, this Contract was executed and approved by the Consultant this 18 day of July, 2023

SUMMIT HOLDINGS, INC. DBA
OKLAHOMA ENVIRONMENTAL
SERVICES, INC.

Deanne Atkinson
President

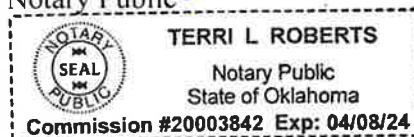
ATTEST:

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

This instrument was acknowledged before me on, this 18th day of July, 2023, by Deanne Atkinson as President, of Summit Holdings, Inc. dba Oklahoma Environmental Services, Inc..

Terril Roberts
Notary Public

My Commission Expires/Commission Number:
04.08.24 / 20003842 (Seal)



IN WITNESS WHEREOF, this Contract was approved and executed by The City of Oklahoma City this 15TH day of AUGUST, 2023

THE CITY OF OKLAHOMA CITY

ATTEST:

Amy K. Simpson
City Clerk



David Holt
Mayor

REVIEWED for form and legality.

Chris Hall
Assistant Municipal Counselor

**EXHIBIT A
SCOPE OF WORK
PROJECT NO. MC-0732-A
BROWNFIELDS DEVELOPMENT PROJECTS ENVIRONMENTAL CONSULTANT
SERVICES**

GENERAL

All reports generated under this solicitation shall be submitted in electronic format, including maps and photographs contained in Phase I/II Environmental Site Assessments (ESAs). Hard copies should be submitted upon request. The Brownsfields Coordinator shall assist the consultant by providing logistical support and regulatory interface (local, State, and Federal) as needed to facilitate performance of the Scope of Services. Logistical support shall entail preparation/publication of public notices, execution of consent for access agreements, coordinating with property owners, arranging site visits, and other services as may be negotiated during the Contract execution phase.

SCOPE OF SERVICES

The consultant shall perform the following types of services under this contract:

1) Phase I/II ESAs

The City intends to use Brownfields grant funds allocated to this solicitation to conduct Phase I and II ESAs. All ESAs must be performed in accordance with ASTM Standards and satisfy EPA's All Appropriate Inquiry (AAI) requirements. A programmatic Quality Assurance Project Plan (QAPP) must be prepared by the consultant and approved by City's Brownfields Coordinator and EPA Region 6 prior to the initiation of contract work. The QAPP must comply with EPA's *Requirements for Quality Assurance Project Plans* (QA/R-5). An example QAPP and/or EPA's *Guidance for Quality Assurance Project Plans* (QA/G-5) shall be provided upon request. Prior to initiating any Phase II ESA fieldwork the Consultants will be required to prepare a site-specific field sampling plan (FSP). The QAPP and the FSP are intended to ensure the site's historical research information, monitoring well installation, soil/groundwater sampling, analytical analyses, and data reporting of soil, surface water, and groundwater conditions is conducted in accordance with the Standard Operating Procedures (SOPs) and Data Quality Objectives (DQOs) outlined in each QAPP.

Consultants may be required to coordinate with the following regulatory entities on Phase II ESAs depending on the nature of the project:

- a. EPA Region 6 Brownfields Team,
- b. The Oklahoma Department of Environmental Quality (DEQ) Brownfields Coordinator,
- c. DEQ's Voluntary Cleanup Plan Coordinator,
- d. Oklahoma Corporation Commission (OCC) Pollution Abatement Division,
- e. OCC Petroleum Storage Tank Division,
- f. OCC Brownfields Coordinator, and

g. Oklahoma Department of Labor.

The City's Brownfields Coordinator shall assist with any necessary regulatory coordination and be advised of interactions with these agencies. The Consultant shall provide data entry services the Environmental Protection Agency's (EPA) ACRES system, and quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

2) Phase III Cleanup Plans

The City's Brownfields assessment grant and Brownfields Cleanup Revolving Loan Fund (BCRLF) can be used to fund cleanup plans. The Brownfields Coordinator shall assist with identifying the range of potential cleanup alternatives at each site. The Analysis of Brownfields Cleanup Alternatives (ABCA) is a Brownfields – specific cleanup plan required for BCRLF cleanup projects. Preparation of an ABCA may also involve close coordination with DEQ's Brownfields Program to ensure the proposed cleanup alternatives meet relevant cleanup standards. The Consultant shall provide data entry services, including input into ACRES, and/or quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

3) Public Meetings

The City may choose to hold public meetings in conjunction with a BCRLF cleanup project or to serve as information dissemination/data gathering opportunities for the Brownfields Redevelopment Program. In these cases, staff support may be required from consultants to address technical issues of sampling activities, cleanup plans, or ongoing remediation activities. The City shall be responsible for preparing and advertising meeting announcements, materials preparation, and facility rental. The Consultant shall provide data entry services, including input into ACRES, and/or quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

4) Cleanup Oversight

The consultant may assist the Brownfields Program with cleanup oversight for active remedial projects. This activity may involve site visits to ongoing cleanup projects to observe site conditions, verifying compliance with the EPA approved QAPP and FSP, verifying completion of cleanup tasks, and obtaining photographs. The Consultant shall document oversight activities by preparing a brief summary for the Brownfields Program that includes date, time, and personnel involved in the on-site visit, observations, and items requiring further action. The Consultant shall provide data entry services, including input into ACRES, and/or quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

5) Site Reuse Assessment

The consultant may assist the Brownfields Program with Site Reuse Assessments. Assessments may include but are not limited too:

- Site walkthrough.
- Gathering and reviewing available site documentation.
- Interviews with key community members including local elected leaders and land use officials.
- Developing an inventory of site assets and infrastructure.
- Assessing market conditions.
- Analyzing opportunities and constraints.
- Identifying potential brownfield site reuse options.

6) Site Reuse Vision

The consultant may assist the Brownfields Program with Site Reuse Vision. Generally, the Site Reuse Vision is the result of a public planning process that defines the site and reuse goals, gathers input from various stakeholders, and identifies feasible reuse alternatives. The extent of community participation in developing a Site Reuse Vision varies. The services may include but are not limited too::

- Host a design charrette (a collaborative meeting during which planning professionals lead stakeholders through a process of exploring options and sketching reuse designs).
- Have design professionals draft reuse alternatives and present the concepts to the community through a series of public meetings.

**EXHIBIT B
COMPENSATION
PROJECT NO. MC-0732-A
BROWNFIELDS DEVELOPMENT PROJECTS ENVIRONMENTAL CONSULTANT
SERVICES**

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Senior Environmental Consultant	\$180
Project Manager	\$135
Senior Geologist	\$135
Environmental Engineer	\$135
Certified Industrial Hygienist (CIH)	\$150
Data Entry Clerk	\$93.75
Demolition Engineer	\$105
Asbestos Designer	\$135
Environmental Scientist/Planner	\$105
Demolition Field Manager	\$105
Operations & Maintenance Technician	\$93.75
Staff Scientist / Hydrologist / Planner	\$105
Asbestos Inspector	\$135
GIS Technician	\$82.50
Draftsman - CADD	\$82.50
Environmental Technician	\$82.50
Administrative Support	\$67.50

Note:

Work conducted through the Oklahoma Corporation Commission (OCC) Indemnity Fund will be invoiced using a lump sum basis negotiated per site with OCC.

ANALYTICAL LABORATORY

<u>PARAMETER</u>	<u>METHOD</u>	<u>UNIT COST</u>
<u>HYDROCARBON ANALYSIS</u>		
BTEX	8021	\$50
BTEX & Naphthalene	Mod 8260	\$80
PAH	8270	\$150
PAH	8310 HPLC	\$150
TPH (GRO & DRO)	8015	\$50
BTEX and TPH Combined (Gasoline)	Mod 8021/8015	\$150
BTEX and TPH Combined (Diesel)	Mod 8021/8015	\$150
BTEX/TPH-G/Naphthalene(Gasoline)	8260/OA1	\$150
BTEX, TPH-Gas & Diesel (Diesel, Used Oil)	Mod 8021/8015	\$150
MTBE	8260B	\$80
Oil & Grease	1664	\$50
Naphthalene (Gasoline or Diesel)	8260	\$80
TPH (DRO)	8015 Mod	\$50

TPH (GRO)	8015 Mod	\$50
Methanol / Ethanol	8015	\$50
Treated Water (BTEX, Phenols, pH, TOC) Effluent	8021, 9066, 9045C,9060	\$190
Terracore Samplers	5035	\$12
Dry Weight Prep (soil)		\$8

ORGANIC PARAMETERS

OA1 (GRO/BTEX/MtBE)	8021/8015	\$50
OA2 (DRO)	OA2	\$50
VOC's Full Scan	8260	\$80
VOC's Full Scan + GRO	8260	\$80
SVOC's	8270	\$300

TOXICITY CHARACTERISTIC LEACHING PROCEDURE

TCLP Metals TOX Characteristics (Leaching Procedures)	1311/6010/7470	\$135
Metals (RCRA 8)	6010/7470	\$135
Lead	6010	\$15
Volatiles	8260	\$80
Individual Volatile	624, 8260	\$80
BNA's (SVOC's)	8270	\$300
Individual Semi-Volatile	625, 8270	\$300
Pesticides/Herbicides	8081/8151	\$150
TCLP Extraction Fee	1311	\$50
ZHE Extraction Fee	1311	\$50

SEMI VOLATILES

Organochlorine Pesticides	8081	\$150
Organophosphorus Pesticides	8141	\$150
PCB's	8082	\$60
Pesticides/PCB's	8081/8082	\$150
BNA's (SVOC's)	8270	\$300
PAH	8270	\$300
Herbicides	8151	\$180

METALS

Metals (RCRA)	6010/7470	\$135
ICP (Individual)	6010/200.7	\$15
ICP/MS (individual)	6020/200.8	\$25
Mercury	7470/245.1	\$30
Metals Digestion (1 digestion per 20 samples)	NA	included
Lab Filtering for Dissolved Metals	NA	\$25

CONVENTIONAL WATER PARAMETERS

Acetone	8260	\$80
Alkalinity	2320	\$20
BOD	SM5210B	\$30

Chloride	9056/300.0	\$20
Chromium Hexavalent	7196/3500Cr-D	\$30
Chromium Hexavalent (soil)	7196A	\$30
COD	410.4	\$25
Color	110.2	\$25
Cyanide	9012/335.3	\$45
Extractable Organic Halogen (EOX)	9023	\$80
Fluoride	9056/300.0	\$20
Hardness	2340	\$25
Iron	6010	\$15
Ammonia Nitrogen	350.1	\$30
Nitrate	9056/300.0	\$20
Nitrite	9056/300.0	\$20
ORP	2580	\$60
Oil & Grease	9071	\$50
TKN	351.2	\$40
pH	9045C	\$20
Total Phenol	9066/420.2	\$45
Total Phosphorus	4500/365.2	\$20
Purgeable Halocarbon	8260	\$80
Extracted TOX	9023	\$80
Dissolved Solids (TDS)	2540	\$20
Settleable Solids	2540	\$20
Suspended Solids	2540	\$20
Total Solids	2540G	\$20
Volatile Solids	2540	\$20
Specific Conductance	9050/120.1	\$20
Sulfate	9056/300.0	\$20
Sulfide	9030B	\$20
Sulfite	4500	\$30
MBAS	5540	\$75
TOC	9060	\$75
TOX	9020/5320B	\$300

CERCLA

TAL Metals	6010/7470	\$135
TCL Semi Volatiles	8270	\$300
TCL Volatiles	8260	\$80

PRIORITY POLLUTANTS

Priority Pollutant Metals		\$210
Priority Pollutant Full Scan VOC's		\$530
Priority Pollutant Full Scan		\$830

RCRA

Flashpoint	1010	\$50
Ignitability	D4982	\$30

Corrosivity	9040A	\$20
Sulfide Total	9030B	\$20
Cyanide Total	9012	\$45
RCRA (8) Metals	6010/7470	\$135
Paint Filter Test	9095	

HAZARDOUS WASTE MEDIA SAMPLES

LBP Bulk Sample - Standard (5-day) Turnaround	Each	\$8
ACM Samples - Standard (5-day) Turnaround	Each Layer	\$9.50

Prices quoted reflect 5 to 7 working day turnaround.

RUSH Turnaround Multipliers:	1 Working Day	2
	2 Working Days	1.5
	3-4 Working Days	1.25

HOLLOW STEM AUGER DRILLING SERVICES

<u>SERVICE</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
Rig Mobilization	Event	\$600
Support Vehicle	Day	\$260
H.S. Auger Drilling with Continuous Sampling or 5' Sample Intervals	Foot	\$37.50
Shelby Tube	Each	\$150
Split Spoon Sampling	Each	\$150

2" Wells

Well Installation/Materials	Foot	\$23
DOT Drums (used)	Each	\$67.50
Stick Up completion - 4"x60" steel, 3'x3'x3" pad & lock	Each	\$450
Stick Up completion - 4"x60" steel, 3'x3'x3" pad & lock (4) 3" ballards & locks	Each	\$895
Flush Mount completion	Each	\$75
Soil Boring Plugging	Foot	\$22.50

4" Wells

Well Installation/Materials	Foot	\$30.50
DOT Drums (used)	Each	\$67.50
Stick Up completion - 6"x60" steel, 3'x3'x3" pad & lock	Each	\$550
Stick Up completion - 6"x60" steel, 3'x3'x3" pad & lock (4) 3" ballards & locks	Each	\$995
Flush Mount completion	Each	\$100
Soil Boring Plugging	Foot	\$22.50

Concrete or Asphalt Coring	Hour	\$255
Bedrock Coring	Foot	N/A

Destructive Rock Drilling (auger refusal then to air or water rotary)	Foot	N/A
Patch Pavement Holes	Each	\$30
Well Development - up to 5 well volumes	Hour	\$175
Portable Decontamination Pit	Day	\$225
High-pressure washer for decontamination	Day	\$235
Well Abandonment - grade - 20 feet below ground surface	Foot	\$22
Well Abandonment - greater than 20 feet bgs	Foot	\$28

GEOPROBE - Direct Push Services

	<u>UNIT</u>	<u>UNIT PRICE</u>
Mobilization/Demobilization	Day	\$300
Geoprobe Daily Rate (drilling equipment & labor)	Day	\$2,400
Unusual Drilling Circumstances (e.g.- multiple layers of fill)	Hour	\$200.00
Surface Drill/Patch (2.5 inch)	Each	\$75
Wet Coring (3" or 6") Thickness X Diameter x \$3.30		
Backfill with Bentonite (1 Bag = 20 feet for borehole)	Bag	\$50
Macro-Core® Soil Sample Liners - 4-foot	Each	\$18
Rig Tool and Equipment Decon	Day	\$225
<u>Groundwater Sampling Materials:</u>	-	-
Includes: SP-15/16 Expendable Points	Each	\$12
Poly Sample Tubing	Foot	\$1.25
Peristaltic Pump	Day/Week	\$30/\$90
<u>Piezometer Materials (1-inch):</u>		
Includes: 2.125" Expendable Points	Each	\$25
1" PVC End Points	Each	\$12
(1"x 5') Sch. 40 PVC Screens	Each	\$20
(1"x 5') Sch. PVC Risers	Each	\$15
¾" Mini-Bailers	Each	\$18
1" H-Plugs, Locking Caps, and Locks	Each	\$30
4" Flush Mount Well Vaults (Installed)	Each	\$100

GEOTECHNICAL LABORATORY TESTING

	<u>UNIT</u>	<u>UNIT PRICE</u>
FOC (Fraction of Organic Carbon)	Each	\$75
Volumetric Water Content (Vadose Zone)	Each	\$30
Dry Bulk Density	Each	\$35
Porosity (Specific Gravity - ASTM D 854)	Each	\$75
Average Grain Size	Each	\$202
(Optional - Hydrometer Test)	Each	\$135
Permeameter (Hydraulic Conductivity)	Each	\$315

(1) The volumetric water content, dry bulk density, and porosity are performed together on a single, undisturbed sample of cohesive

- soil. The price shown is for the combination of all three tests.
- (2) The price shown is for a ASTM D2434 permeability test on a coarse-grained soil (i.e., no more than 10% passing a #200 sieve). The price for a ASTM D5084 permeability test on an undisturbed sample of fine-grained soil is \$315. For a disturbed sample of fine-grained soil, the cost is \$165 for a Proctor test to determine the appropriate density for remolding, plus \$75 for remolding the sample, plus \$315 for the ASTM D5084 permeability test on the remolded sample.

FIELD EQUIPMENT & SUPPLIES

	<u>UNIT</u>	<u>UNIT PRICE</u>
Photoionization Detector	Day/Week	\$120 / \$360
Water Level Meter	Day/Week	\$50 / \$150
Oil/Water Interface Probe	Day/Week	\$67.50 / \$202.50
Low Flow Sampling Pump (QED Sampling Pro)	Day/Week	\$275 / \$900
Portable Purge Pump	Day/Week	\$50 / \$150
Micro Purge Pump	Day/Week	\$65 / \$195
Purge Pump - 2" Grundfos	Day/Week	\$125 / \$375
Low Flow Purge & Sampling Pump (Bladder)	Day/Week	\$275 / \$825
2-inch Bailers	Each	\$15
3-inch Bailers	Each	\$18
Survey Equipment (Level/Rod)	Day/Week	\$50 / \$150
pH, Conductivity, Turbidity, Temperature Meter	Day/Week	\$60 / \$180
Dissolved Oxygen Meter	Day/Week	\$25 / \$75
Isobutylene Cal Gas (103 Liter)	Each	\$150
Datalogger System	Day/Week	\$75 / \$225
Groundwater Filters (Metal analysis - 20 cm)	Each	\$25
XRF - Lead Based Paint (LBP) Survey	Day	\$750
XRF - Shipping	Event	\$195

VEHICLES

Field Vehicle - Sedan	Day/Mile	\$1.50
Field Vehicle - Automobile & 1/2-ton truck	Day/Mile	\$1.50
Field Vehicle - 3/4-ton Truck & larger	Day/Mile	\$3.90

ADDITIONAL SERVICES - LUMP SUM COSTING

- 1) Disposal of investigation-derived waste to be bid on a site-specific basis.
- 2) Registered surveying services to be bid on a site-specific basis. Payments for surveying services associated with this Contract shall be invoiced at the rate of \$180 per hour for use of a two (2) man crew to include transportation of equipment and materials, overhead and profit and all reports to be made. Costs for non-registered surveying included in drilling services.
- 3) Personal protective equipment (PPE) defined by OSHA as Level D including half-face respirator provided at no cost. PPE Level C and above will be bid on a site-specific basis.

The Consultant shall submit invoices to the City, accompanied by detailed description of the total work accomplished not less than once per month (or more frequently if requested by the Brownsfields Coordinator).

EXHIBIT E - FEDERAL REQUIREMENTS

This content is from the eCFR and is authoritative but unofficial.

Title 40 —Protection of Environment

Chapter I —Environmental Protection Agency

Subchapter B —Grants and Other Federal Assistance

Part 33 —Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs

Authority: 15 U.S.C. 637 note; 42 U.S.C. 4370d, 7601 note, 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198, 2 CFR part 200.

Source: 73 FR 15913, Mar. 26, 2008, unless otherwise noted.

Subpart C Good Faith Efforts

§ 33.301 What does this subpart require?

§ 33.302 Are there any additional contract administration requirements?

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

Subpart C—Good Faith Efforts

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

- (a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- (b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- (c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.
- (d) A recipient must require its prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.
- (e) A recipient must require its prime contractor to provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator.
- (f) A recipient must require its prime contractor to have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.
- (g) A recipient must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.
- (h) Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.
- (i) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the appendix concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 2 CFR part 200 Subpart D—Post Federal Award Requirements, Procurement Standards, or 40 CFR part 35 subpart O, as applicable.

[73 FR 15913, Mar. 26, 2008, as amended at 79 FR 76054, Dec. 19, 2014]

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal

Government) recipient or prime contractor follow the six good faith efforts?

- (a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.
- (b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with § 33.501 and must report to EPA on their accomplishments in accordance with § 33.502.
- (c) Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.
- (d) Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.



OKLAENV01C

TTINNEY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/5/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 1017969 INSURICA 5100 N. Classen Blvd, #300 Oklahoma City, OK 73118	CONTACT NAME: Tara Tinney, ARM, CRIS, ERIS	
	PHONE (A/C, No, Ext): (405) 556-2273 FAX (A/C, No): (405) 556-2332	
	E-MAIL ADDRESS: Tara.Tinney@INSURICA.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Westchester Surplus Lines Insurance Company	10172
	INSURER B : ACE Property & Casualty Insurance Company	20699
	INSURER C : Insurance Company of the West	27847
	INSURER D :	
	INSURER E :	
	INSURER F :	

INSURED

Oklahoma Environmental Services
2424 N Kelley Ave
Oklahoma City, OK 73111

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	G47403844001	5/1/2023	5/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Pollution \$ 1,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	H08884110001	5/1/2023	5/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	X	X	G47403856001	5/1/2023	5/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	WOK504099705	5/1/2023	5/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liab.			G47403844001	5/1/2023	5/1/2024	Each Claim 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: MC-0732-A

Certificate Holder is listed as an Additional Insured with respects to general liability, umbrella, and auto liability policies if required or agreed to in a written contract subject to all provisions and limitations of the policy. Waiver of subrogation is provided with regards to General Liability, Auto Liability, Umbrella, and Workers Compensation policy if required or agreed to in a written contract subject to all provisions and limitations of the policy. Coverage is primary and non-contributory.

SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

The City of Oklahoma City and its participating public trusts
Department of Public Works
420 W Main St. 7th Floor
Oklahoma City, OK 73102

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**ADDITIONAL REMARKS SCHEDULE**

AGENCY INSURICA		License # 1017969	NAMED INSURED Oklahoma Environmental Services 2424 N Kelley Ave Oklahoma City, OK 73111
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
\$5,000 each occurrence deductible - General Liability
\$5,000 each pollution condition deductible - Pollution
\$5,000 each claim deductible - Professional Liability