

## DRAFT

### REMEDIATION CONSULTING SERVICES AGREEMENT

PADEP Facility ID #:15-25097

PAUSTIF Claim #:2012-0058(I)

This agreement ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_ [Insert Year], by and between The Devereux Foundation ("Devereux"), a nonprofit corporation, with a principal place of business at 444 Devereux Drive, Villanova, PA 19085 and [Insert Environmental Consulting Firm], ("Consultant") with its principal place of business at [Insert Environmental Consultant's Address] (collectively, the "Parties").

#### RECITALS

WHEREAS, Devereux is the [select current/former] [select owner/operator] of Devereux Brandywine Campus, PADEP Facility ID#15-25097, located at 100 Shaw Drive, Glenmoore, PA 19343, the "Site".

WHEREAS, the Consultant, a [Insert State] Corporation, performs environmental consulting work as an independent contractor.

WHEREAS, the Pennsylvania Department of Environmental Protection ("PADEP") has determined that corrective action including, but not limited to, site characterization, interim remedial measures and remediation, of a petroleum release at the Site is required ("Remediation").

WHEREAS, Devereux reported a claim for coverage relating to the release to the Pennsylvania Underground Storage Tank Indemnification Fund ("PAUSTIF"), claim number 2012-058(I) ("Claim").

WHEREAS, PAUSTIF has determined the Claim is eligible for coverage from the PAUSTIF subject to the applicable statute and regulations including the payment of reasonable and necessary costs of corrective action at the Site.

WHEREAS, the Consultant has presented to Devereux a proposal or bid response document for Remediation to be performed.

WHEREAS, Devereux desires that Consultant perform the scope of work described in Exhibit A to this Agreement (the "Scope of Work") for an amount not to exceed the fixed costs described in Exhibit B.

WHEREAS, the Consultant desires to perform the Scope of Work described in Exhibit A to this Agreement for an amount not to exceed the fixed costs described in Exhibit B.

WHEREAS, Devereux and the Consultant desire to submit the costs of Remediation to PAUSTIF for review and payment through PAUSTIF's third-party claims administrator, via payment requests and the supporting documentation specified in Exhibit B, to assure that payment is warranted based upon the conditions of this Agreement and subject to applicable laws and regulations including the limitation of the payment to the reasonable and necessary costs for Remediation, not to exceed the claim aggregate limit, and subject to applicable deductible and/or proration.

NOW THEREFORE, in consideration of the obligations, covenants and conditions set forth in this Agreement, the Parties, intending to be legally bound, agree as follows:

### **1. Recitals Incorporated**

The above recitals are hereby incorporated as if fully set forth herein.

### **2. Responsibilities of Consultant**

- a. Consultant, as an independent contractor to Devereux, shall perform the Scope of Work (Exhibit A) in accordance with, and subject to, the other provisions of this Agreement.
- b. The Scope of Work shall be performed in accordance with all applicable federal, state, and local rules and regulations including, but not limited to, the requirements of the Storage Tank and Spill Prevention Act (Act 32 of 1989, as amended) and Pa. Code, Title 25, Chapter 245, established under the Land Recycling and Environmental Remediation Standards Act (Act 2 of 1995) and Pa. Code, Chapter 250 (Administration of Land Recycling Program).
- c. Consultant shall perform the Scope of Work for an amount not to exceed the Base Contract Price ("BCP") of **[\$insert BCP]** plus any Cost Adders, Optional Milestones and/or Unit Costs, subject to all other provisions of this Agreement.
- d. Consultant shall participate in periodic site meetings with Devereux and PAUSTIF for site status updates. Consultant will be provided no less than ten (10) days written notice of the date, time, and location of the meeting by Devereux/PAUSTIF through their third party administrator.
- e. Consultant will obtain all necessary permits, licenses, certifications, easements, and any other necessary permissions and/or documentation from the state, township or other entity to complete the Scope of Work.
- f. If required by Devereux, provide a Project Manager to oversee all aspects of the work and interface with Devereux representatives, other contractors and any other individuals as deemed necessary by Devereux.

### **3. Responsibilities of Devereux**

- a. Devereux shall exclusively retain the services of Consultant to perform the Scope of Work, in accordance with, and subject to, the other provisions of this Agreement.
- b. Devereux shall provide access for Consultant and its subcontractors to the Site, and shall enter into access agreements with other third party property owners, as necessary for Consultant to complete the performance of the Scope of Work.
- c. Devereux shall, as necessary to complete the Scope of Work: (i) cooperate and assist Consultant with the preparation and submittal, to PADEP, PAUSTIF, local governing authorities and others, of all information and documents including, without limitation, correspondence, notices, reports, data submittals, restrictive covenants, engineering and

- institutional controls, and the like; and (ii) implement and maintain any engineering or institutional controls.
- d. Devereux shall transmit to Consultant copies of all documentation, correspondence, reports, and the like, sent or received by Devereux, regarding the Scope of Work at the Site.
  - e. Devereux shall make a good faith effort to minimize any and all interference with the progress of the Scope of Work if the Site is remodeled or otherwise modified. Devereux shall also make a good faith effort to place this condition on third parties that are not a party to this Agreement including, but not limited to, current owners, future owners, current operators, future operators, current lessees and future lessees.
  - f. Devereux shall provide a representative to be available to Consultant to assist if any issues/questions arise while Consultant is performing the Scope of Work.

#### **4. Period of Performance**

Consultant shall begin performance of its obligations herein upon receipt of written Notice to Proceed. Consultant shall put forth its best effort to perform and complete the Scope of Work within a reasonable time period as agreed to by the Parties in Exhibit B. Devereux agrees that if Devereux requires modifications to this Agreement or otherwise causes Consultant to be delayed in its performance of the Scope of Work that the projected time for completion shall be reasonable extended by Devereux.

#### **5. Standard of Care**

Consultant shall perform the Scope of Work with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services under similar conditions in the same or similar locality. The foregoing is in lieu of all other warranties, express or implied, including warranties of marketability or fitness for a particular purpose.

#### **6. Fees and Payment**

- a. Upon the completion of a milestone as described in Exhibit B, Consultant shall submit a payment request ("Payment Request") to Devereux for approval using the form in Exhibit B. The Payment Request must include all supporting documentation required in Exhibit B to ensure completion of each milestone.
- b. To the extent provided by law, all invoices for payment must be accompanied by a lien release.
- c. Final Payment Request approval will not be provided by Devereux until the Consultant has delivered to Devereux a complete release of all liens arising out of this Agreement or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to Devereux to indemnify Devereux against such lien. If such lien remains unsatisfied after payments are made, the Consultant shall refund to Devereux all money that Devereux may be compelled to pay in discharging such lien, including costs and reasonable attorney's fees.

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- d. Devereux shall, within thirty (30) days, review and approve, deny, or modify the Payment Request for PAUSTIF reimbursement. The Devereux approved or Devereux modified Payment Request shall then be submitted by Devereux to the PAUSTIF for payment of reasonable and necessary costs. Devereux denied Payment Request shall not be submitted to PAUSTIF.
- e. Devereux shall use the PAUSTIF to satisfy the Payment Request in connection with the performance of the Scope of Work under the following conditions:
  - i. Should the PAUSTIF be temporarily suspended or permanently terminated, Devereux shall pay Consultant for any unpaid Payment Request plus interest, within thirty (30) days. Interest is calculated as 0.75% per month on outstanding amounts;
  - ii. All payments made by PAUSTIF shall be subject to the claim aggregate and shall be subject to applicable laws and regulations. Devereux is responsible to pay any applicable deductible and/or proration. The claim is not prorated and the applicable deductible has been met by Devereux;
  - iii. With the exception of the Devereux's applicable deductible or proration, Consultant accepts payment from Devereux of PAUSTIF covered items as payment in full and cannot seek to recover any difference from the Devereux.
  - iv. Reimbursement shall be adjusted from stated fixed costs in Exhibit B for elements of the Scope of Work not actually performed.
  - v. Devereux shall issue payment to Consultant within fifteen (15) days of receipt of reimbursement from PAUSTIF.
- f. The BCP may not be increased except upon the occurrence of a "New Condition" as defined in the Section titled "New Conditions" below and only in accordance with, and subject to, the provisions of this Agreement.

**7. Insurance**

- a. Consultant shall maintain insurance and indemnify Devereux in accordance with the requirements set forth in Devereux's "Insurance and Indemnification Requirements and Minimum Coverage Limits," which is attached hereto as Exhibit C and hereby made a part of this Agreement.
- b. Consultant and Devereux shall each be solely responsible for obtaining and maintaining casualty and other applicable insurance as required by each respective party for the materials, equipment and property, including remediation equipment that each party owns.

**8. Performance Product and Warranty**

Not Applicable.

## **9. Remediation Equipment and Property Loss or Damage**

Consultant owned materials, equipment and other property at the Site, that are used, constructed or installed for this Agreement, that are damaged or destroyed by acts of nature, improper design, improper installation, improper maintenance, improper operation, improper handling, theft, or vandalism are the sole responsibility of Consultant. All materials, equipment and other property at the Site are considered Consultant owned until Consultant is paid for the materials, equipment and other property, including through reimbursement by the PAUSTIF, unless the materials, equipment and other property are provided by Devereux. Subsequent to payment by Devereux, including reimbursement by the PAUSTIF, ownership of said materials, equipment and property shall reside with Devereux. Devereux shall be provided with the title to all trailers if trailer-mounted equipment is owned by Devereux. Devereux shall have the benefit of all manufacturer warranties on materials, equipment and other property that it owns.

Devereux owned items used for the Agreement that are damaged or destroyed by acts of nature, theft, or vandalism are the sole responsibility of Devereux. The Consultant shall perform its duties and actions for this Agreement in such a way that Devereux owned materials, equipment and property shall not be damaged or destroyed by improper design, improper installation, improper maintenance, improper operation or improper handling to the extent that these actions are the responsibility of the Consultant as specified in the Scope of Work.

## **10. Non-performance by Consultant**

If Consultant fails to meet any specification of the Scope of Work as outlined in this Agreement, Devereux or the PAUSTIF shall notify Consultant in writing of the deficiency(ies). If Consultant does not correct the deficiency(ies) within fifteen (15) days, Consultant shall be in breach of contract and Devereux may terminate this Agreement or the PAUSTIF may withhold any further payment. If Consultant corrects the deficiency(ies) within fifteen (15) days, Devereux must approve in writing any successful cure made by Consultant for this Agreement to continue.

- a. Lack of continuous progress is considered a failure to meet the specifications of the Scope of Work. Continuous progress is defined as persistent and effective action on the part of Consultant done in furtherance of implementing the Scope of Work. If Devereux determines that continuous progress is not being made toward implementing the Scope of Work, Devereux may provide a written First Notice of Deficiency to Consultant and the PAUSTIF detailing the reasons for this determination. After thirty (30) days from date of the First Notice of Deficiency, Devereux may provide a written Second Notice of Deficiency to Consultant and the PAUSTIF, providing details regarding the ongoing lack of continuous progress. Consultant may be notified in writing by Devereux thirty (30) days after the date of the Second Notice of Deficiency, that the Consultant is in breach of contract and Devereux may terminate this Agreement or the PAUSTIF may withhold any further payment.
- b. If the Agreement is terminated, Consultant shall be notified in writing that the Agreement has been terminated. Consultant shall submit Payment Request(s) for all reasonable and necessary costs of completed milestones in accordance with the Section titled "Fees and

Payment” within thirty (30) days of notification that the Agreement is terminated, and Consultant and Devereux shall have no further obligations under this Agreement.

- c. All referenced written notices are to be sent via certified mail, return receipt requested, and first class mail.

## **11. New Conditions**

- a. A “New Condition” exists when one (1) or more of the following events occur and, as the result of such event, Consultant, Devereux or the PAUSTIF has demonstrated that the cost and/or period of time necessary to accomplish the Scope of Work is materially increased, or that it is no longer practicable to implement all or part of the Scope of Work:
  - i. The discovery of New Contamination (defined as any presence or release, or any portion of a presence or a release, of any regulated substance including, without limitation, a regulated substance that materially impacts soil, sediment, surface water, soil vapor, indoor air quality and/or groundwater quality that did not exist or was not identified in previous corrective action(s)). New Contamination includes, but is not limited to:
    - 1) in the case of a Site with no separate phase liquid (SPL) in subsurface media in the two (2) years prior to the date of this Agreement, the detection of SPL that occurs after the date of this Agreement in one (1) or more monitoring points for two (2) or more consecutive quarters with a thickness of 0.01 feet or greater as measured by an interface probe;
    - 2) regulated substances discovered after the date of this Agreement that are present in Site media in separate, dissolved, sorbed or volatile form that could not reasonably be anticipated at a petroleum release site including, but not limited to, dry cleaning chemicals, fertilizers, and combustion ash, and that cause a material impediment in performing the Scope of Work;
    - 3) increases in concentrations in regulated substance(s) dissolved in surface water or groundwater greater than one hundred (100) times the maximum concentration of such regulated substance(s) measured during the two (2) years prior to the date of this Agreement, and present at more than one hundred (100) times the maximum concentration for two (2) or more consecutive quarters, provided that this increase cannot be attributed to the Remediation including, but not limited to, rebound caused by the deactivation of any and all remediation systems; or
    - 4) migration of off-site contamination on to the Site that materially affects the Consultant’s ability to perform the Scope of Work.
  - ii. Construction, remodeling or other reconfiguration of the Site to the extent that it materially impedes the performance of the Scope of Work;

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- iii. A release reported to the PADEP and/or the PAUSTIF from an Underground Storage Tank (UST) system(s) or surface spill that occurs after the date of this Agreement and that materially impacts soil, sediment, surface water, soil vapor, indoor air quality, and/or groundwater quality;
  - iv. A release, past or present, from a UST system(s) present at the Site but not known to exist by Consultant and/or Devereux, or known to the Devereux but not revealed to the Consultant, on or before the date of this Agreement that materially impacts soil, sediment, surface water, soil vapor, indoor air quality and/or groundwater quality;
  - v. Promulgation of new, or change in interpretation of existing, federal, state, or local law, regulation, ordinance, guidance or written policy to the extent that it materially impedes the performance of the Scope of Work. This shall include material changes to laws and regulation that establish, implement and administer the PAUSTIF;
  - vi. Limits or changes to access to the Site or adjacent properties that occur after the date of this Agreement that materially impedes the performance of the Scope of Work;
  - vii. Demands, claims, lawsuits, regulatory enforcement actions and the like initiated by parties other than Devereux and Consultant that materially impedes the performance of the Scope of Work, including those tasks whereby the continued execution of this Agreement will result in, or has a credible possibility of resulting in, a third party lawsuit and/or enforcement action by the PADEP or other governmental agency;
  - viii. One (1) or more Site-Specific Assumptions provided in Exhibit A no longer remain true and accurate.
- b. Upon the discovery or occurrence of a New Condition, the discovering Party shall notify the other Party and PAUSTIF in writing by certified mail, return receipt requested, and first class mail, describing the details and a summary of the expected impact to the Scope of Work of such New Condition within thirty (30) days of the discovery of the New Condition. Failure by the discovering Party to notify the other Party and/or the PAUSTIF within thirty (30) days of discovery of the New Condition shall grant the Party that should have received notification the right to terminate this Agreement.
- c. Upon notification of a New Condition, Devereux, in consultation with PAUSTIF, shall within thirty (30) days choose to:
- i. Terminate Agreement; or
  - ii. Request a modified Scope of Work and associated cost estimate from Consultant to address the New Condition(s) for Devereux's and the PAUSTIF's review.
- d. Upon receipt of Devereux's request for a modified Scope of Work and associated cost estimate, Consultant shall within thirty (30) days choose to:
- i. Prepare the requested documents and submit them to Devereux and the PAUSTIF. Upon Devereux, PAUSTIF, and any necessary PADEP approval of the modified Scope of Work and associated cost estimate, a written Amendment to this Agreement

shall be prepared and signed by both Parties. Upon execution of an Amendment, Consultant shall continue with the modified Scope of Work and perform the modified Scope of Work in accordance with the terms agreed to in the executed Amendment. Devereux, in consultation with PAUSTIF, may choose to reject (not authorize) the modified Scope of Work and associated cost estimate to address the New Condition(s) prepared and submitted by Consultant. In this case, Devereux shall terminate this Agreement; or

- ii. Decline Devereux's request to prepare a Modified Scope of Work and associated cost estimate to address the New Condition(s), or the Consultant may fail to submit the documents within thirty (30) days. In either event the Agreement shall be terminated.
- e. If the Agreement is terminated, the Party terminating the Agreement shall provide thirty (30) days written notice to the other Party by certified mail, return receipt requested, and first class mail. Consultant shall submit Payment Request(s) for all reasonable and necessary costs of fully and partially completed milestones in accordance with all other terms described in the Section titled "Fees and Payment" within thirty (30) days of notification that the Agreement is terminated, and Consultant and Devereux shall have no further obligations under this Agreement.

## **12. Site Closure**

Not applicable.

## **13. Governing Law and Assignment**

This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania and it may not be assigned without the prior written consent of the other party. All claims, causes of action or other legal disputes concerning any work performed in Pennsylvania shall be brought in the county where the work was performed.

## **14. Modification**

This Agreement represents the entire understanding between the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement shall not be modified, amended, supplemented, or rescinded in any manner except by written agreement signed by both Parties..

## **15. Termination**

If both Parties agree to terminate this Agreement, then the Agreement shall be terminated upon each Party notifying the other Party and each Party separately notifying the PAUSTIF in writing by certified mail, return receipt requested, and first class mail. Consultant shall submit Payment Request(s) for all reasonable and necessary costs of fully and partially completed milestones in accordance with all other terms described in the Section titled "Fees and Payment" within thirty (30) days of notification that the Agreement is terminated, and Consultant and Devereux shall have no further obligations under this Agreement.



Devereux reserves the right to terminate this Agreement for any reason whatsoever by providing Consultant with fifteen (15) days written notice

If the Agreement is terminated under any circumstance, Consultant shall provide copies of all Work completed by the agreement termination date including plans, specifications and reports if applicable

#### **16. Integration and Severability**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings (whether written or oral) between the Parties.

The provisions of this Agreement are severable, and in the event any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof. The Parties agree that in the event of a invalid or unenforceable provision, that such provision shall be replaced with valid enforceable language that expresses the original intention of the stricken provision.

#### **17. Suspension**

If Consultant fails to pay any claim lawfully due against it by any other person that accrued or arose out of, or in connection with the performance of this Agreement, and if any such failure shall cause, or threaten to cause a delay of the work Consultant shall perform, Devereux reserves the right to withhold payment and/or not approve Payment Requests to Consultant until such time as Consultant can provide reasonable assurances to Devereux that such debt or claim has been satisfied and Consultant is able to resume work. This section shall not be construed to require Devereux to determine or adjust any claims or disputes between the Consultant and persons or entities making claims against Consultant, or to require Devereux to withhold any money for the protection of any other person or entity that has performed services on behalf of Consultant under this Agreement.

Devereux reserves the rights to suspend the work as described herein for any reason. In the event that Devereux determines to indefinitely suspend the work in this Agreement, Devereux shall pay Consultant for all services rendered and materials used prior to the notice of suspension provided to Consultant by Devereux. PAUSTIF reimbursement of such costs will be considered on a case by case basis.

#### **18. Relationship of the Parties**

Consultant is, and shall at all times during the term of this Agreement, be considered an independent Consultant. This Agreement shall not be construed as creating a relationship between the Parties as one of a partnership, joint venture, employment, agency or any other type of association.

#### **19. Assignment**

This Agreement is binding upon the Parties, their heirs, assigns and successors. Neither Party shall assign any rights or responsibilities under this Agreement without the signed consent of the other Party.

## **20. Confidentiality**

Consultant agrees that any proprietary information regarding Devereux's business operations and/or any personally identifying health care or treatment information related to any Devereux client that it may learn of in the course of performing services under this Agreement is confidential and shall not be disclosed to any other person or entity without the prior written authorization of Devereux. Consultant, its employees and agents agree to sign a Confidentiality Agreement if requested to do so by Devereux. Consultant's obligations under this provision shall survive the termination of this Agreement in perpetuity.

## **21. Use of Documents**

All documents produced by Consultant pursuant to this Agreement are instruments of service and shall become the property of Devereux. Consultant shall provide Devereux with copies of reports, drawings, specifications, maps, and other documents that Devereux may request.

## **22. Use of Sub-Consultants/Subcontractors**

Consultant may engage independent sub-consultants/subcontractors to perform services on its behalf under this Agreement. Consultant's use of any sub-consultant/subcontractors shall not release Consultant from its primary obligations to perform under this Agreement. Consultant agrees that it shall indemnify and hold Devereux, its Officers, Directors, employees, agents, Consultants, representatives, subsidiaries, affiliates, heirs and assigns harmless from any liability of any kind or nature, claims, costs including, but not limited to attorney's fees, judgments, suits, damages, or settlements arising from or related to any sub-consultant's/subcontractor's performance of services herein on Consultant's behalf.

## **23. Waiver**

No waiver of any right, remedy or power under this Agreement by Devereux shall prevent the subsequent exercise of such right, remedy or power by Devereux with respect to subsequent occurrences of Consultant's breach of the terms of this Agreement.

## **24. Force Majeure**

Neither Party hereto shall be liable for any failure to perform due to acts of God, acts of government, wars, fires, floods, explosions, natural catastrophes, civil disturbances, strikes, riots, unusually severe weather, (such as tornadoes), or failures or fluctuations in electrical power, heat, light, air conditioning, computer or telecommunications services or equipment ("Force Majeure"). In such event the performance of such Parties' obligations shall be suspended during the period of existence of such cause and the period reasonably required thereafter to resume the performance of the obligation. The Parties shall use their best reasonable efforts to minimize the consequences of Force Majeure.

## **25. Agreement Construction**



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[Insert Point of Contact Job Title]  
[Insert Street Address]  
[Insert City], Pennsylvania [Insert Zip Code]

**30. Consultant's Tax Identification Number**

Consultant certifies that its federal tax identification number is \_\_\_\_\_.

**31. Effect of Signatures**

This agreement shall not be a legally binding contract until fully executed by both Consultant and Devereux.

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IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by duly authorized representative(s) in two (2) identical counterparts on the day and year first above written.

For: **The Devereux Foundation**

For: **[Insert Consultant Name]**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

For: **The Devereux Foundation**

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

Name: \_\_\_\_\_

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

**Consultant must provide Devereux with properly executed Certificates of Insurance, Declarations Pages and relevant endorsements prior to the commencement of work. Provide insurance documents when the signed Agreement is returned.**

## **EXHIBIT A**

### **SCOPE OF WORK**

The Scope of Work described in the Consultant's [Title of Bid Response or Proposal] dated [Insert Date], Written Questions and Responses from the Third Party Reviewer that modify the Request for Bid Document dated [Insert Date(s)], and the Request for Bid Document dated [Insert Date], is incorporated herein, with the following exceptions:

- [Insert Site Specific Information, deletions or additions to the SOW or "None"]

#### **Site-Specific Assumptions:**

Assumptions are discussed in the Consultant's [Title of Bid Response or Proposal] dated [Insert Date], Written Questions and Responses from the Third Party Reviewer that modify the Request for Bid Document dated [Insert Date(s)], and the Request for Bid Document dated [Insert Date]. However, for clarity and to facilitate administration of the Agreement, the only Site-Specific Assumptions that shall be considered under the Section of this Agreement titled "New Conditions" are as follows:

- [Insert Site-Specific Assumptions (SSA) accepted by both parties or "None"]
- [Examples of SSAs are 'PADEP will not require more than 8 wells to be installed', or 'use of the farm road to reach off-site locations will be permitted'. SSAs are statements that are believed to be true and accurate as of the date of the Agreement and that will materially impact the Scope of Work and/or costs if, at some point during the period of the Agreement, the SSA is no longer true or accurate.]

#### **Provisions:**

The following Provisions are agreed upon by both Parties. [Provisions are agreements by both Parties that are not addressed by the main body of the Agreement. Optional costs and cost adders can be described here as well. Provisions will not trigger a "New Condition".]

- [Insert Provisions or "None"]
- [Examples: 'If this occurs then that will happen statements' such as "If groundwater data in the designated POC groundwater monitoring wells has been either non-detect or below SHS for four consecutive quarters, Consultant will petition PADEP to approve a reduction in the total number of groundwater attainment sampling events."; or "Should it be determined necessary to implement any of the Optional Cost Adders as described in the aforementioned documents, Optional Cost Adders will be billed consistent with Exhibit B of this Agreement."]

**EXHIBIT B**  
**PAYMENT REQUEST AND SCHEDULE OF FIXED COSTS**  
[Modify table consistent with Selected Consultants Scope of Work/Task and Billing Schedule]

Milestone Identification		Supporting Documentation	Estimated Completion Month	Fixed Cost/ Payment Request Amount
A	Sensitive Receptor Survey	▪ Summary of Findings	TBD	\$TBD
B	Private Utility Markout	▪ Report with explanation of identified features	TBD	\$TBD
C	Hole Clearing Activities	▪	TBD	\$TBD
D	Soil Boring Investigation	▪ Laboratory Analysis ▪ Soil Boring Logs ▪ Summary Table	TBD	\$TBD
E	Installation of Four (4) Monitoring Wells	▪ Monitoring Well Construction Diagrams and Logs	TBD	\$TBD
F	Soil Gas Point (SG-2) Installation and two (2) rounds of Sampling two (2) soil gas points	▪ Analytical Results ▪ Soil Gas Point Log	TBD	\$TBD
G	Site Survey	▪ Site Survey Data	TBD	\$TBD
H1	Product Recovery Efforts	▪	TBD	\$TBD
H2	Disposal of Recovered Product	▪	TBD	\$TBD
I	Groundwater Monitoring and Sampling (10 wells)	▪ Laboratory Analytical Report	TBD	\$TBD
J	Supply Well Sampling	▪	TBD	\$TBD
K	Site Summary Report	▪ Draft Report ▪ Final Site Summary Report	TBD	\$TBD
L1	Remedial Alternatives Analysis	▪	TBD	\$TBD

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L2	Feasible Remedial Alternatives Analysis Report	<ul style="list-style-type: none"> <li>▪ Draft Report</li> <li>▪ Final Feasible Remedial Alternatives Analysis Report</li> </ul>	TBD	\$TBD
<b>Base Contract Price</b>				\$TBD
<b>Optional Cost Adder Milestones</b>				
M1	Additional Groundwater Monitoring and Sampling; one (1) event with ten (10) wells	<ul style="list-style-type: none"> <li>▪ Laboratory Analytical Report</li> </ul>	TBD	\$TBD
M2	Sample one (1) Additional Monitoring Well during a groundwater sampling event	<ul style="list-style-type: none"> <li>▪ Laboratory Analytical Report</li> </ul>	TBD	\$TBD
N1	One (1) Additional Supply Well Sampling Event during a separate mobilization event	<ul style="list-style-type: none"> <li>▪ Laboratory Analytical Report</li> </ul>	TBD	\$TBD
N2	One (1) Additional Supply Well Sampling Event during another sampling event or investigation	<ul style="list-style-type: none"> <li>▪ Laboratory Analytical Report</li> </ul>	TBD	\$TBD
O	Semi-Annual Progress Report	<ul style="list-style-type: none"> <li>▪ Progress Report</li> </ul>	TBD	\$TBD
P1	Installation of one (1) Additional Monitoring Well during a separate mobilization event	<ul style="list-style-type: none"> <li>▪ Monitoring Well Log</li> </ul>	TBD	\$TBD
P2	Installation of one (1) Additional Monitoring Well as an add-on to a drilling investigation	<ul style="list-style-type: none"> <li>▪ Monitoring Well Log</li> </ul>	TBD	\$TBD
Q	Update Survey	<ul style="list-style-type: none"> <li>▪ Updated Survey Map</li> </ul>	TBD	\$TBD



## **EXHIBIT C**

### **The Devereux Foundation Insurance and Indemnification Requirements and Minimum Coverage Limits**

#### **I. Insurance Requirements.**

A. Contractor's insurers shall maintain an AM Best Rating of at least A-: IX and must be licensed in the state where work is being done. Contractor's insurance coverage must be written on a per Occurrence form.

B. Contractor's Commercial General Liability, Automobile Liability, Pollution Liability (when applicable) and Umbrella Liability policies shall be endorsed to name Devereux, its Officers, Trustees, employees, and independent contractors as Additional Insureds. Insurance required by this contract and supported by the additional insured endorsement shall be as broad as necessary to support the indemnification requirement in said contract or as broad as the indemnitor's insurance coverage, whichever is broader.

C. Contractor's insurance policies must

- (1) include a waiver of subrogation in favor of Devereux,
- (2) with respect to required liability policies, provide cross liability coverage as would be achieved under the standard ISO separation of insured clause;
- (3) stipulate that with the exception of property insurance, the Contractor's policies of insurance shall be considered as primary insurance and any similar policy maintained by Devereux shall be considered as excess and non-contributory;
- (4) designate Devereux as an additional insured (excepting Contractor's Workers' Compensation and Professional Liability (if applicable) policies) using ISO endorsement forms set forth below.
- (5) provide coverage to Devereux for any and all bodily injury and property damage claims, costs and expenses arising out of or in any way relating to work or operations performed under this Agreement, including but not limited to bodily injury claims by employees of Contractor, regardless of whether Contractor's negligence, acts or omissions caused, contributed to or are alleged to have caused or contributed to the injury, damage or loss for which the claim is made

D. Contractor's failure to maintain the aforementioned insurance at any time required by this Agreement is a material breach of its obligations under this Agreement. In the event of any such breach, Contractor shall be liable to Devereux for any and all costs, liabilities, damages, penalties or expenses (including but not limited to attorneys fees, court and settlement expenses) sustained by Devereux in the handling, adjustment, defense and/or settlement of any claim that would otherwise be covered by such insurance.

E. Contractor shall provide Devereux with thirty (30) days' advanced written notice of the cancellation, non-renewal or material adverse change to the specified coverage and limits.

F. Prior to the commencement of any work, Contractor shall provide the Finance Director or his/her designee [Insert Center Name and Address] with Certificates of Insurance and relevant

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endorsements for all policies set forth above evidencing that Contractor and all sub- contractors, sub-consultants, independent contractors and any other person/entity performing duties under this Agreement on Contractor's behalf, have insurance coverage within the limits specified in this Agreement and have named Devereux as an additional insured [excepting Contractor's Workers' Compensation and Professional Liability (if applicable) policies] as described above.

G. Contractor shall monitor the compliance of sub-contracting parties with these insurance requirements, including maintaining Certificates of Insurance throughout the term of the contract. In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, the Contractor shall indemnify, defend and hold harmless Devereux from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract.

**II. Minimum Coverage Limits.**

A. Contractor's requirements. Contractor shall obtain and maintain at all times during the course of this Agreement the following insurance and minimum limits:

(1) Workers' Compensation as required in compliance with the limits established by all applicable State and Federal law in which the work is to be performed and Employer's Liability Insurance with minimum limits of \$500,000 bodily injury for each employee, \$500,000 Disease Policy limit and \$500,000 Disease limit for each employee.

(2) Commercial General Liability Insurance on an "occurrence" basis including coverage for Premises and Operations, Products and Completed Operations, Personal Injury and Advertising Injury, Broad Form Property Damage, Independent Contractors, Broad Form Blanket Contractual Liability, Damage to Rented Premises (formerly Fire Legal Liability), Coverage for Explosion, Collapse and Underground Property Damage (XCU), and Medical Payments. The minimum Limits of Liability required shall be:

Limit Per Occurrence	\$1,000,000
Personal Injury/Advertising Injury	\$1,000,000
Policy General Aggregate	\$2,000,000 with a "Per Project Aggregate Endorsement"
Product/Completed Operations	\$2,000,000
Medical Payments	\$10,000 each person
Damage to Rented Premises	\$100,000

Contractor's Commercial General Liability must include completed operations coverage and must be maintained for two (2) years from the day the work has been completed or the date of the last payment, whichever is later. Additional Insured coverage during the project, and for an additional two-year period for products/completed operations, shall be provided under ISO additional insured endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or substitute form(s) providing equivalent coverage.

(3) Automobile Liability Insurance covering any owned, hired or non-owned vehicle or other vehicle used in the performance of services hereunder in the amount of \$1,000,000 combined single limit per occurrence and including any statutorily mandated "No-Fault" Personal Injury Protection, medical payments or Uninsured/Underinsured Motorist coverage.

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(4) Umbrella Liability Insurance shall provide following form coverage in excess of the above mentioned automobile, employers' and general and professional liability (if applicable) policies. Contractor's Umbrella policy shall be at least as broad in coverage as the primary layer policies and will contain no exclusion not on the primary layer policies. Minimum coverage limit required is:

\_\_\_ \$5.0 million per occurrence and in the aggregate for those contractors involved in Excavation, Site Work, Blasting, Demolition, Roofing or any other operation involving work at heights in excess of 20 feet, or any work involving the hiring of a general contractor and/ or construction manager for the construction of a new building or renovation of an existing building with a total value in excess of \$250,000.

\_\_\_ \$1.0 million per occurrence and in the aggregate for all other operations.

(5) Payment and Performance Bonds in an amount equal to 100% of the contract value are required for all projects of \$1.0 million or more. Performance and Payment Bonds may be required on other projects, subject to the judgment of Devereux's Treasurer. A letter from a surety evidencing the Contracting Party's ability to secure such bonds is required for any project greater than \$250,000 but less than \$1.0 million.

B. Subcontractor's requirements. Subcontractors shall be required to obtain and maintain at all times all insurances and minimums limits listed in Section II A(1) – (4) above.

C. Additional Insured Endorsement. All policies set forth above must be maintained for two (2) years from the day the work has been completed. Additional Insured coverage during the project, and for the additional two year period for products/completed operations, shall be provided under ISO additional insured endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or substitute form(s) providing equivalent coverage.

D. The insurance requirements and other provisions of this Agreement shall not limit the Contractor's indemnification obligations set forth in elsewhere in this Agreement.

### III. **Additional Minimum Coverage Requirements.**

If indicated below, Contractor shall also purchase the following types and limits of coverage.

#### A. Pollution Liability Insurance

(1) \_\_\_ is applicable and shall provide coverage for any actual or alleged discharge, dispersal or release of pollutants or pollutants brought on site and resulting from Contractor's services with minimum limits of \$1,000,000.00 per occurrence and annual aggregate. The policy will provide Contractual Liability and include coverage for clean-up and all remediation costs both for on-site and off-site pollutants, coverage for Bodily Injury, Personal Injury and Property Damage liability for both on-site and off-site claims, suits or occurrences, and all related legal defense costs.

(2) \_\_\_ is not applicable.

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**B. Architects' and Engineers' Professional Liability Insurance**

(1) \_\_\_ is applicable and shall provide coverage for negligent acts, errors and omissions arising out of the performance of professional services rendered with minimum limits of \$1,000,000.00 per occurrence and annual aggregate.

(2) \_\_\_ is not applicable.

**C. Asbestos Abatement Liability Insurance**

(1)\_\_\_ is applicable and shall provide coverage for services involving the containment, enclosure, encapsulation, removal transportation, disposal or handling of asbestos or asbestos containing materials with minimum limits of \$1.0 million per claim and annual aggregate. The policy will provide Contractual Liability coverage.

(2) \_\_\_ is not applicable.

**D. Owners' and Contractors' Protective Liability Insurance**

(1) \_\_\_ is applicable.

(2) \_\_\_ is not applicable.

**IV. Indemnification.**

A. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold Devereux, its Officers, Directors, employees, agents, contractors, representatives, affiliates, heirs and assigns harmless from and against liability of any kind or nature, any and all claims, judgments, suits, settlements, costs including, but not limited to any injury, harm, loss, cost, damage, claim, expense, liability and damages arising from or in any manner related to any work or operations performed under this Agreement regardless of the negligence or alleged negligence of Devereux, its Officers, Directors, employees, agents, contractors, representatives, affiliates, heirs and assigns. Upon request of Devereux, Contractor shall, at no cost or expense to Devereux, defend any suit asserting a claim for any loss, damage, or liability specified above, and Contractor shall pay any costs and attorneys' fees that may be incurred by Devereux in connection with any such claim or suit. The aforesaid duty to indemnify and defend Devereux shall commence immediately upon notice to Contractor of any such claim or suit and shall continue unless and until a court has determined that such loss, cost, damage, claim, expense, or liability results solely from the gross negligence or willful misconduct of Devereux or its employees.

B. Contractor's obligation to indemnify, defend and hold Devereux harmless shall include but not be limited to claims by employees of Contractor and any subcontractor for bodily injury that occurs or is alleged to have occurred in the course and scope of employment by Contractor or any subcontractor.

C. Devereux shall indemnify and hold Consultant harmless from and against any Claims arising out of or related to (i) the negligent acts or omissions, or violations of Law, of Devereux

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and (ii) regulated substances, including petroleum, that are present at, released to or from, treated at, or removed from, the Site.

## **EXHIBIT D**

### **SUPPORTING DOCUMENTS**

- Consultant's **[Title of Bid Response or Proposal]** dated **[Insert Date of Document]**
- Written Questions and Responses from the Third Party Reviewer that modify the Request for Bid Document dated **[Insert Date(s) of Documents]**
- The Request for Bid Document dated **[Insert Date of Document]**
- **[Specify Other Contract Documents]**