

OSBR Land, LLC

Is accepting **BIDS** on:

**UST CLOSURE AND SOIL EXCAVATION/DISPOSAL FOR
1320 HIGHLAND ROAD, BATON ROUGE, EAST BATON ROUGE PARISH, LA**

Proposals will be received by:

OSBR Land, LLC
Susan Ludwig, CPEX
402 North Fourth Street
Baton Rouge, Louisiana

Until:

3:00 P.M.

THURSDAY

AUGUST 6, 2009

OSBR Land, LLC

Baton Rouge, Louisiana

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SUMMARY AND INSTRUCTIONS

SUMMARY

The following constitutes a Request for Proposals (RFP) by OSBR Land, LLC (OSBR). OSBR has initiated this RFP and invites interested parties to submit their proposal and qualifications to conduct Brownfields Remedial Actions on a selected Brownfields site located at 1320 Highland Road in Baton Rouge, East Baton Rouge Parish, Louisiana as part of a Brownfields Cleanup Grant funded by the U.S. Environmental Protection Agency (EPA). Contractor will perform an underground storage tank (UST) system closure, hydraulic lift removal, service bay sump removal, limited soil excavation/disposal; and concrete removal at the site.

Contractor shall supply all labor, equipment, licenses, submittals, supplies, materials, PPE, per diem, insurance, taxes and all other items necessary to accomplish all work and requirements required to remove the UST system, remove the hydraulic lift, remove the service bay sump, collect soil samples, excavate impacted soil, backfill the excavation, and prepare a UST Closure Assessment Report, as further described in the attached Scope of Work (SOW).

Qualifications will be accepted from individuals, firms, or groups of firms having the requisite expertise and experience.

All correspondence and other communications regarding this procurement should be directed to the attention of:

OSBR Land, LLC
Brownfields Project
C/O Susan Ludwig, CPEX
402 North Fourth Street
Baton Rouge, LA 70802

Qualifications must be received at the above address no later than 3 pm, Thursday, August 6, 2009.

The quantities and items stated on the attached RFP Bid Form are best estimates of the SOW and are for the purposes of comparing offers. OSBR does not guarantee that the quantities are correct or that stated tasks will be performed. OSBR reserves the right to vary the quantities or delete items in their entirety, if necessary.

BIDDER'S SUBMISSION

All proposals should be mailed in a **sealed envelope** to the OSBR address provided above. Bidders should include the following items as part of their proposal submission:

- Letter of interest
- Brief statement of company qualifications
- Summary of relevant project experience with references
- Copies of current licenses and certification (LA Contractor's License and LDEQ UST Worker Certification)
- Documentation of minimum insurance requirements
- Completed Bid Proposal Page

- Bid bond

PRE-BID SITE VISIT

A Pre-bid site walk is required. Arrangements for bidders to walk the site will be made by OSBR. The pre-bid site walk is scheduled for 9 am on Friday, July 24, 2009.

PRICING

Proposals shall remain valid for ninety (90) calendar days from the date of the receipt of proposals. If an Award is issued as a result of this solicitation, the prices proposed shall remain in effect for a one (1) year Base Period. Within that time, the Offeror agrees to furnish any and all items/services, at the prices offered, for each item and within the time specified. The quantities and items of work indicated in the RFP represent best approximations of the work required to meet the objectives of the project. OSBR reserves the right to vary the line item quantities or delete items of work in their entirety. The contractor shall be paid for work performed at the negotiated line item unit rates.

BID GUARANTY AND BOND

1. Each bid must be accompanied by a CERTIFIED CHECK, CASHIER'S CHECK OR BIDDER'S BOND in an amount equal to not less than five percent (5%) of the total bid and made payable to OSBR Land, LLC. Checks or Bid Bonds of the unsuccessful bidders will be returned once their bids have been rejected. Check or Bid Bond of the successful bidder will be returned after the contract has been completed or delivery made.
2. PERFORMANCE AND PAYMENT BONDS: Performance and/or payment bonds are required. The initial BID BOND will be returned to successful bidder after award and performance/payment bonds are received..
3. BOND REQUIREMENTS: All Bidders Bonds and Performance Bonds must meet the following criteria: The Bond submitted must be from a surety company authorized to do business in Louisiana and with a rating of "A" or better in the most current edition of the A.M. Best Insurance Report. Should the Surety Company become bankrupt or be removed from the State, the Contractor shall furnish a new bond without cost to OSBR. All bonds are subject to the approval by OSBR.
4. DELIVERY DEFAULT: Forfeiture of the successful bidder's cashier's check or certified check could result upon failure to deliver by firm delivery date quoted in bid unless extension of time is approved by OSBR. If a bid bond is furnished, and the contractor fails to deliver by firm delivery date quoted in bid (unless extension of time is approved by OSBR), the contractor will make payment in the amount of five percent (5%) of his bid price, within fifteen (15) calendar days after written notice is given. Should it be necessary to file suit for collection thereof, attorney's fees in the amount of twenty-five percent (25%) of the amount of the bid bond shall be due and payable.

QUESTIONS ABOUT BID

Any questions pertaining to this bid proposal may be directed in writing to:

OSBR Land, LLC
Brownfields Project
C/O Susan Ludwig, CPEX
402 North Fourth Street
Baton Rouge, LA 70802

Fax 225-267-6306
e-mail: sludwig@c-pex.org

The deadline for submission of questions pertaining to this RFP is 4:00 pm on Tuesday, July 28, 2009.

SCOPE OF WORK

UST System Closure/Soil Excavation Services at 1320 Highland Road, Baton Rouge, East Baton Rouge Parish, LA

I. INTRODUCTION

OSBR Land, LLC (OSBR) is soliciting and evaluating bids from licensed contractors to conduct Brownfields Remedial Actions on a selected Brownfields site located at 1320 Highland Road in Baton Rouge, East Baton Rouge Parish, Louisiana as part of a Brownfields Cleanup Grant funded by the U.S. Environmental Protection Agency (EPA). Contractor will perform underground storage tank (UST) system closure, hydraulic lift removal, service bay sump removal, limited soil excavation/disposal, and concrete removal at the site. The attached Figure 1 shows the approximate location of property and features to be removed.

This work is being performed as a remedy under the Louisiana Department of Environmental Quality (LDEQ) Voluntary Remediation Program (VRP). The scope of work is further described in the Voluntary Remedial Action Plan (VRAP). Copies of the VRAP are available electronically from the LDEQ electronic document management system (EDMS) located at <http://www.deq.louisiana.gov/portal/tabid/2604/Default.aspx>. The document is dated July 2009 and can be located on EDMS using Agency Interest No. 20655.

Bids should be prepared in accordance with the Scope of Work (SOW) as set forth below. In addition to the normally required business licenses required by the state of Louisiana, the chosen contractor will be required to possess a current LDEQ UST Worker Certification. Upon award, the chosen contractor will be expected to execute an OSBR contract and supplemental contract provisions included as Attachments A and B, respectively.

II. CONTRACTOR SCOPE OF WORK

CONTRACTOR shall supply all labor, equipment, licenses, submittals, supplies, materials, PPE, per diem, insurance, taxes and all other items necessary to accomplish all work and requirements of this SOW, as further described below.

General SOW and site characteristics to consider are as follows:

- **Site Status** - This site is a vacant lot, which was formerly developed as a retail automobile service station. The site is surrounded by perimeter fencing.
- **Groundwater** - Groundwater was encountered at an average depth of eight (8) to ten (10) feet below ground surface (bgs) during site assessment activities. Based on the assumed depth of excavation for the UST closures, groundwater may be encountered during UST closure activities.

- **Concrete** - The site is partially covered with concrete: approximately 20,000 square feet, and approximately six (6) to eight (8) inches thick. OSBR may require that all concrete, rubble, debris and other pavement throughout the site (in addition to pavement located over the UST System and additional structures to be addressed) be removed and transported off-site. Special consideration will be given to bids proposing to recycle this material.
- **Wastes** - All fluids and solid wastes generated in the performance of this SOW shall meet all applicable federal, state and local disposal regulations and requirements. Any wastes requiring disposal shall be disposed of at a permitted solid waste landfill and fluids disposal facility licensed and approved to accept these kinds of waste, soil, fuel, and debris. The CONTRACTOR should provide the name and address of the selected permitted solid waste landfill, tank recycling center and fluids disposal/recycling facility for disposal of wastes generated during the performance of this SOW on the completed bid proposal page (Attachment C) included with their proposal.

A. Meetings and Notifications

1. CONTRACTOR shall be required to attend two meetings in preparation for the UST/soil removal as follows:
 - a. Kick-off meeting - no less than seven (7) calendar days after award, the CONTRACTOR shall attend a kickoff meeting to be held at the OSBR offices in Baton Rouge, or other designated location, in proximity to the subject site.
 - b. Public meeting - no less than fourteen (14) calendar days after award but after the kick-off meeting, the CONTRACTOR shall attend a public meeting at a location near the project site. The CONTRACTOR shall be prepared to answer questions about the specific work to be performed.
2. CONTRACTOR will contact Louisiana One Call for utility mark-outs, and provide the LDEQ with a 7-day notification telefax transmittal, prior to initiation of field activities. Please note that OSBR will submit the 30-day notification form, with Certified UST Worker and Analytical Laboratory listed as "To Be Announced".

B. UST System Removal, Soil Excavation, and Waste Disposal

1. CONTRACTOR shall have all federal, state, and local licenses and permits required to perform the UST removal and soil excavation activities. CONTRACTOR's site personnel shall have all OSHA health and safety training and certifications required to perform the work.

2. The perimeter of the site is currently fenced. The CONTRACTOR shall conduct daily inspections of the fencing and ensure its integrity is maintained throughout the project to restrict site access and secure open excavations. Other appropriate protective measures may be necessary to protect on-site workers and the public from open excavations and may be selected by the CONTRACTOR.
3. Contractor shall mark (spray paint) areas of initial concrete removal necessary to expose UST, UST piping, hydraulic lift system, and service bay sump. The area of concrete removal must be approved by an OSBR representative prior to initiation of concrete removal activities.
4. Contractor shall remove the concrete, rubble, debris, and other pavement from the areas approved by OSBR. It is assumed the concrete is 6 to 8 inches thick over the majority of the site. All removed concrete, rubble, debris, and other pavement removed shall be separated and segregated for characterization and disposition, preferably recycling. Additional concrete removal from the remainder of the site may be required to expose areas of over-excavation. Additional concrete removal will be directed by OSBR. Costs to remove concrete beyond the area approved in item 2 above will not be reimbursed without prior approval by OSBR.
5. After all of the concrete, rubble, debris and other pavement have been removed from the areas to be excavated, the CONTRACTOR shall excavate the soil and/or granular material coverings the UST and other components to be removed. The soil will be separated and segregated for sampling and characterization for disposition. Soil piles placed on site should be placed on and covered with plastic sheeting to avoid contact with storm/rain water.
6. CONTRACTOR shall remove any residual fluids from UST system, hydraulic lift system and service bay sump prior to removal. The amount of residual fluids, if any, in the USTs is assumed to be less than 4 inches. The attached Bid Form includes an assumed amount of fluids to be pumped and disposed/recycled off-site, in addition to a bid request for unit rates.
7. CONTRACTOR shall wash out and inert or vapor free each UST prior to removal. The CONTRACTOR will pump the UST wash water/liquid from the tanks and dispose/recycle off-site.
8. CONTRACTOR shall remove the former UST system consisting of three (3) eight thousand (8,000) gallon USTs and one (1) five hundred (500) gallon UST and associated piping; a hydraulic lift piston and service bay sump. The hydraulic lift piston and service bay drain are located in the area of the former building with service bays, near the center of the property. The USTs are located on the northwest portion of the subject site. A sketch showing the approximate location and orientation of the tanks and building is included as

Figure 1. It should be noted that the tanks were discovered during site assessment activities, and the exact (current and former) contents of the tanks are unknown. Because the site was a former gas station, it is assumed that the tanks contained gasoline and possibly diesel fuel or used oil. The 8,000 gallon USTs were recently gauged and are believed to have less than four (4) inches of liquid content. The 500 gallon UST could not be accessed to measure its contents.

9. Following removal of the UST system, hydraulic lift system, and service bay sump, confirmatory soil sampling will be performed by the CONTRACTOR in accordance with the site specific VRAP. OSBR will observe and approve sample locations prior to collection. The samples will be analyzed for parameters specified in Section C that follows. The OSBR representative may require over-excavation of select areas prior to sample collection if hydrocarbon impact is evident.
10. CONTRACTOR shall characterize, manifest, and transport all excavated material offsite for disposal or recycling.
11. It is assumed that some over-excavation of soil will be required, based on field screening and/or analytical results. Over-excavated soil will be segregated and placed on and covered with plastic sheeting pending the completion of waste characterization by the CONTRACTOR. The over-excavated soil will be manifested, and transported offsite for disposal. Standby time and/or a re-mobilization may be required to await analytical results of the initial closure samples and determine the need for over-excavation. OSBR will instruct the CONTRACTOR on the selected approach (standby vs. re-mobilization). Both costs will be accounted for in the attached bid proposal page (Attachment C). Standby time will not be paid unless the CONTRACTOR is specifically instructed to do so by OSBR.
12. In the event that excessive rainwater or groundwater accumulates in the open excavations, OSBR will secure permits and approvals from the LDEQ to direct discharge the water from the excavation into the nearest storm sewer. As directed by OSBR, the CONTRACTOR shall supply all pumps, equipment, and piping to pump the accumulated water from the excavation into the nearest storm sewer. Rate includes all personnel and equipment (standby costs) while pumping.
13. Once OSBR determines that the excavation may be backfilled, OSBR will notify the CONTRACTOR and OSBR will survey the excavated area. The final survey will determine the quantities for the pay items as presented in the Bid Proposal Page.

C. Closure Samples and Analytical Requirements

1. The CONTRACTOR shall be responsible for the collection and analysis of soil samples in strict accordance with the site specific VRAP and the LDEQ's *Underground Storage Tank Closure/Change-In-Service Guidance Document*, dated October 2003. For the purposes of this bid request, assume twenty one (21) initial confirmatory soil samples will be collected. The anticipated sample locations are identified in the VRAP and generally include the following:
 - Two (2) soil closure samples will be collected per UST (four USTs total)
 - One (1) soil closure sample per 20 feet of product piping (approximately 45 feet of piping)
 - Two (2) soil closure samples from the hydraulic lift system
 - One (1) soil closure sample from the service bay sump
 - One (1) soil closure sample per former dispenser island (four dispensers total)
 - One (1) composite backfill sample per UST hold (two UST holds total)
 - One (1) composite backfill soil sample from the hydraulic lift system area
 - One (1) composite backfill soil sample from the service bay sump area
2. In addition to the closure samples, appropriate QA/QC samples must be collected as required by LDEQ and as specified in the site specific Quality Assurance Project Plan (QAPP) which is included as a part of the VRAP.
3. Samples will be placed in new, laboratory supplied containers, labeled, stored on ice, and shipped under proper chain-of-custody (COC) procedures to an LDEQ-certified laboratory for analysis of:
 - Benzene, toluene, ethylbenzene and xylenes (BTEX) by SW-846 Method 8260B;
 - Methyl tert-butyl ether (MTBE) by SW-846 Method 8260B;
 - Total petroleum hydrocarbons–gasoline range organics (TPH-GRO) by SW-846 Method 8015B;
 - TPH-diesel range organics (TPH-DRO) by SW 846 Method 8015B;
 - TPH-oil range organics (TPH-ORO) by SW 846 Method 8015B;
 - Polycyclic aromatic hydrocarbons (PAHs) by SW-846 Method 8270C; and
 - Eight RCRA Metals by SW-846 Method 6000/7000 Series.

Sample analyses will be performed on a 48 hour turnaround time.

4. CONTRACTOR shall be responsible for the collection of any samples required for waste characterization to be analyzed at a minimum for TCLP metals, reactivity, corrosivity, and ignitability, or otherwise as directed by the

disposal / recycling facility. Sample analysis will be performed on an expedited turnaround time (no more than 96 hours for receipt of results).

5. CONTRACTOR shall identify the selected LDEQ-certified laboratory to perform the laboratory analyses listed above on the completed bid proposal page (Attachment C) included with their proposal.

D. Backfill and Site Restoration

1. Backfilling activities may not begin until approval to proceed has been provided by OSBR. The approval will be provided following OSBR's receipt and review of analytical laboratory results from the closure/confirmatory samples.
2. CONTRACTOR may use a combination of excavated soils and/or imported clean soil for backfill purposes. Excavated tank hold soil may be used as backfill, only after laboratory analyses confirm that the soils are acceptable for this purpose and approved by OSBR. CONTRACTOR shall supply clean imported backfill (clean certification from CONTRACTOR required, subject to independent testing by OSBR) to make up for any deficit in the required soil volume needed to complete backfilling and place in excavation.
3. The CONTRACTOR shall conduct backfilling of soils in six (6) to twelve (12) inch lifts where feasible, as needed to return the excavated area to grade. Backfill of the excavated area shall to be mechanically tamped after each lift. Backfilling will continue until the excavated area is returned to match existing grade and allow for runoff and settling.
4. CONTRACTOR shall grade area to drain, and place Hydro seed, Bermuda grass, or other approved alternative on backfilled areas and areas where concrete has been removed; and clean all debris and trash from site.

III. REPORTING

1. The CONTRACTOR shall prepare a completed Underground Storage Tank Closure/Assessment form in accordance with the LDEQ's *Underground Storage Tank Closure/Change-In-Service Guidance Document*, dated October 2003. All necessary supporting material shall be included with the document. OSBR will review the report prior to submittal to the LDEQ within the regulatory time frame.
2. In addition to the LDEQ reporting requirements for UST closure, a letter report summarizing all site activities (UST closures, hydraulic lift system removal, removal of service bay sump, etc.) should be provided. The report should include the following elements at a minimum:

- Brief narrative of work performed
- Tabulated analytical data
- Drawings/figures illustrating sample locations
- Waste disposal documentation
- Lab reports
- Photographs

IV. SERVICES TO BE PROVIDED BY OSBR

1. OSBR will submit the 30-day UST Closure Notification form to the LDEQ.
2. OSBR representatives will monitor field activities, health and safety, and quality assurance/quality control (QA/QC) issues associated with the performance of work scope items.
3. OSBR representatives will review and approve any project documents, including daily field activity reports, laboratory analytical reports, and the UST Closure Assessment Report.

V. HEALTH AND SAFETY

1. The CONTRACTOR's personnel shall comply with all applicable health and safety requirements and have the proper training to perform the SOW.
2. All activities shall be in compliance with the following:
 - United States Department of Labor, OSHA Standards,
 - State - Specific Safety and Health Regulations,
 - U.S. EPA Standard Operating Safety Guidelines, and
 - NIOSH/OSHA/USGA/U.S. EPA Occupational Safety and Health Guidance.
3. Prior to commencement of site work, the CONTRACTOR will provide a site specific health and safety plan (HASP) to OSBR for review and approval. The HASP should adequately address the potential hazards that may be encountered while performing the SOW described herein (i.e. excavation, UST removal, sampling, concrete removal, etc.). The HASP should identify a site health and safety officer (Field Supervisor). All personnel will be required to read and sign the HASP, and it will be readily available in the field at all times. A daily safety meeting shall be conducted prior to work each day to advise workers of ongoing and new health and safety concerns. Documentation of the daily safety meeting should be provided to OSBR on a daily basis (see section VI).
4. CONTRACTOR's onsite personnel shall be required to have current Hazardous Waste Site Operations 40-hour Training per 20 CFR 1910.120

requirements. CONTRACTOR shall be required to provide photocopies of 40-hour OSHA training certificates required for site personnel (per 29 CFR 1910.120) to OSBR following notice to proceed.

At a minimum, Level D Personal Protective Equipment (PPE) (steel-toe boots, hard hat, and safety glasses with side shields, and hearing protection) will be required in and around all active work areas at all times.

VI. QUALITY ASSURANCE/QUALITY CONTROL (QA/QC)

The CONTRACTOR shall submit daily reports of field activities performed each day. The daily reports should include documentation of the daily safety meeting and field notes or logs of the work performed. Daily reports shall be submitted to OSBR representatives by no later than 10:30 am the following scheduled workday.

VII. COORDINATION WITH OSBR

The CONTRACTOR shall coordinate all activities with OSBR's representative serving as the Site Superintendent (SS).

VIII. PROJECT SCHEDULE

The following schedule shall be maintained by the CONTRACTOR:

- Kick-Off Meeting: no less than seven (7) calendar days following contract award
- Mobilization and Initiation of Site Activities: no less than fourteen (14) calendar days following contract award
- Completion of Site Activities: no more than fourteen (14) calendar days following mobilization
- Submittal of Draft Report to OSBR: no more than fourteen (14) calendar days following demobilization from site

FIGURE 1
SITE PLAN

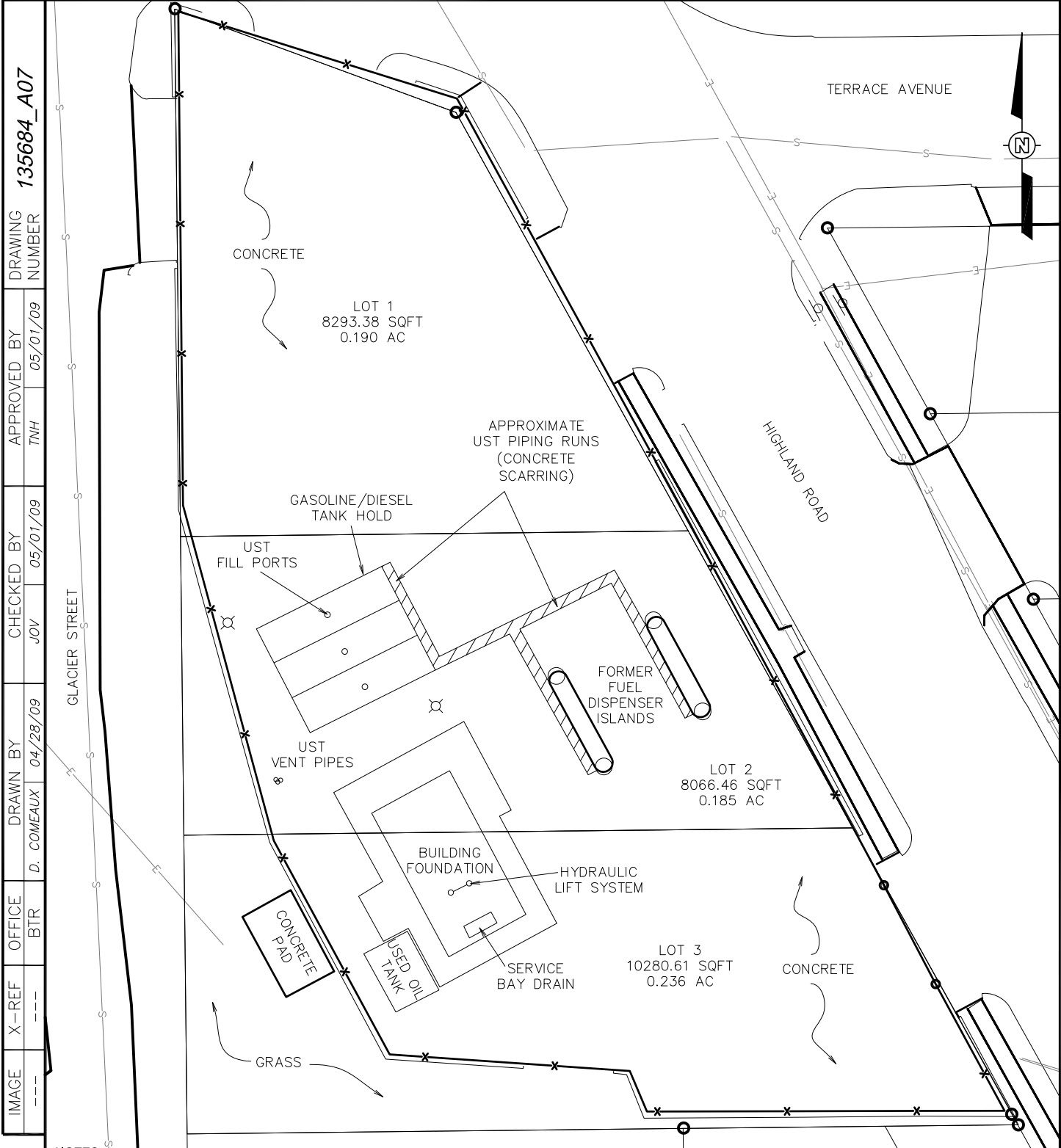


IMAGE	X-REF	OFFICE	DRAWN BY	CHECKED BY	APPROVED BY	DRAWING NUMBER
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			04/28/09	05/01/09	05/01/09	

NOTES:
 (1) DRAWING BASED ON BOUNDARY SURVEY PROVIDED BY CSRS, INC., AUGUST 2007.
 (2) LOCATION OF USTs, PIPING RUNS, HYDRAULIC LIFT SYSTEM, AND SERVICE BAY DRAIN ARE APPROXIMATE AND ARE BASED ON OBSERVATIONS DURING A SITE VISIT CONDUCTED IN APRIL 2009.

LEGEND

- Tank Hold Observation Wells
- Perimeter Fence



	OSBR LAND, LLC BATON ROUGE, LOUISIANA
	FIGURE 1 SITE PLAN VOLUNTARY REMEDIAL ACTION PLAN 1320 HIGHLAND ROAD, BATON ROUGE, LOUISIANA

ATTACHMENT A
EXAMPLE OF AWARDED BIDDER CONTRACT

MASTER SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement"), is made as of the ____ day of _____ 2009, by and between the undersigned contractor ("Contractor") and OSBR Land, L.L.C., ("OSBR"), a Louisiana limited liability company.

NOW, THEREFORE, the parties agree as follows:

1. Scope of Services

This Agreement anticipates the issuance of various written service orders or other requests for services (each an "Order") and sets forth the terms and conditions pursuant to which Contractor will provide OSBR environmental remediation services at such locations as are requested by OSBR. Each Order shall be subject to the terms and conditions of this Agreement. The services that Contractor may be requested to perform pursuant to this Agreement include, without limitation, the following: (a) engineering and technological services relating to the environment; (b) other engineering, technological and consulting services; (c) geotechnical services including analysis, design, engineering, and construction; (d) containment, treatment, decontamination, recovery, cleanup, and repackaging of material; (e) site assessment, remediation and restoration; and (f) laboratory analysis. Such services as are from time to time requested by OSBR hereunder are collectively referred to herein as the "Services." The particular Services required of Contractor at a given location shall be as and limited to those stated in the Order.

2. Term

This Agreement shall be in effect for one (1) calendar year from the date of execution by Contractor. Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice to the other. If, at the time of termination of this Agreement, Services pursuant to an Order remain uncompleted and the parties intend that such Services shall be completed, the terms of this Agreement shall continue to apply to such Services.

3. Compensation

OSBR agrees to compensate Contractor in accordance with Exhibit I when the Services are performed. Copies of the schedules in effect as of the date hereof are attached hereto as Exhibit 1 and are an integral part of this Agreement. As to those Services for which no schedules exist, Contractor shall be compensated on a time and materials basis as shall be set forth in an Order.

4. Payment

a. Unless otherwise agreed to in writing, invoices will be submitted once a month. Payment of invoices in U.S. Dollars is due within 15 business days of receipt of the invoice.

5. Taxes, Fees and Other Charges

The Contractor shall pay all conveyance, transfer and recording fees and taxes, if any, imposed on any transfer of or construction on property contemplated by this Agreement and all hazardous, mixed, or radioactive waste disposal fees and taxes, and all sales, use, value added, gross receipts, franchise, and like taxes, and tariffs and duties, applicable to the transactions contemplated by this Agreement.

6. Independent Contractor

Contractor shall be an independent contractor in performing the Services and shall not act as an agent or employee of OSBR except when executing subcontracts for the treatment, transportation, storage and/or disposal of materials, in which case Contractor shall be OSBR's agent. Subject to the terms and conditions hereof, Contractor shall be responsible for its employees, subcontractors, and agents and for their compensation, benefits, contributions, and taxes, if any.

7. Documentation, Records, Audit

Contractor, when requested by OSBR, shall provide OSBR with copies of all documents which it is required to file or maintain under any federal, state, or local law naming or obligating OSBR, including, without limitation, any hazardous waste manifests relating to the Services.

OSBR shall have the right, at its expense, to inspect and audit Contractor's records and accounts covering charges hereunder at all reasonable times during the course of the Services for each particular Order and for a period of one (1) year after the substantial completion thereof.

Upon completion of such audit, the results shall be presented to Contractor. To the extent that the audit indicates that Contractor has not been adequately compensated by OSBR, OSBR shall pay Contractor any compensation due as shown by the audit. Alternatively, to the extent that any audit indicates that the total amount of compensation paid by OSBR to Contractor exceeded the actual amount due, Contractor shall return such excess compensation to OSBR.

8. Risks and Allocation

OSBR hereby acknowledges, understands and agrees that: (1) there are risks inherent to environmental investigation, analysis, management, remediation, and removal, many of which cannot be ascertained or anticipated prior to or during the course of the Services; for example, sampling activities (e.g., borings) and excavation trenches may spread contaminants through geologic formations despite the use of accepted professional standards; (2) due to the inherently limited nature and amount of the data resulting from environmental investigation methods, complete analysis of conditions is not always possible, and, therefore, conditions frequently vary from those anticipated earlier; for example, borings in one

location may miss contaminants only a few feet away; and (3) technology, methods, accepted professional standards as well as law and policy, are undefined and/or constantly changing and evolving. In light of all of the foregoing and Contractor's lack of responsibility for creating the conditions requiring the Services, as a material inducement to and consideration for Contractor's agreement to perform the Services on the terms and at the price herein provided for. OSBR SPECIFICALLY AGREES THAT CONTRACTOR'S LIABILITY SHALL BE STRICTLY LIMITED AS AND TO THOSE CAUSES AND AMOUNTS PROVIDED IN SECTIONS 8 THROUGH 14 OF THIS AGREEMENT OR TO THE MAXIMUM EXTENT OTHERWISE PERMITTED BY LAW.

9. Contractor Warranties, Representations and Covenants

Subject to the limitations of this Section and Sections 8 through 14 hereof:

a. Warranties: Contractor warrants, represents, and covenants that: (1) Contractor has the capability, experience, and means required to perform the Services; (2) such Services will be performed using personnel, equipment, and material qualified and/or suitable therefore; and (3) within the limits prescribed by OSBR, Contractor will perform the Services in a diligent and workmanlike manner consistent with (i) accepted professional practices and standards for nationally recognized firms engaged in similar work, as in effect at the time the Services are performed, and (ii) OSBR's reasonable rules, standards and specifications as communicated to Contractor prior to beginning the Services under each Order; (iii) applicable federal, state, and local laws, regulations, and ordinances as in effect and construed at the time the Services are performed; (4) Contractor shall utilize the licensed or permitted treatment, storage, or disposal facility or facilities designated by OSBR; (5) with respect to any contracts, purchase orders or related third party service agreements relating to the off-site transportation, storage, treatment or disposal of waste materials, Contractor shall, for the protection of OSBR, demand from all vendors and subcontractors from which Contractor procures machinery, equipment, materials or services guarantees reasonably acceptable to OSBR which shall be made available to OSBR to the full extent of the terms thereof; provided, however, that Contractor's liability with respect to same shall be limited to procuring guarantees (but only to the extent available) from such vendors and subcontractors and rendering reasonable assistance to OSBR for the purpose of enforcing the same; (6) Contractor shall use its best efforts to avoid infringements, as set forth in Section 17 hereof; and (7) Contractor shall maintain confidentiality, as set forth in Section 19 hereof.

b. Remedies: If OSBR alleges that Contractor has breached a warranty set forth in this Section 9, then OSBR shall promptly notify Contractor in writing and, before taking any further action against Contractor, shall afford Contractor the opportunity, at Contractor's cost and option, to either re-perform any defective Service according to the original scope of work therefore (as modified up to the time of breach), or to commence and diligently pursue the cure of such breach, in which event such re-performance or cure shall be OSBR's sole and exclusive remedy therefore (except as provided in the next sentence). OSBR's sole and exclusive remedy for the breach of any of the above warranties which breach damages property (other than the Services themselves) or injures persons, shall be as provided in Section 10 hereof. EXCEPT AS SET FORTH IN SECTION 9 ABOVE, CONTRACTOR

MAKES NO GUARANTEE OF RESULTS OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AS TO ANY OF THE GOODS OR OTHER MATERIALS FURNISHED OR SERVICES WHICH MAYBE PERFORMED PURSUANT TO THIS AGREEMENT.

10. Indemnity by Contractor

Subject to the limitations of Sections 8 through 14 hereof, any indemnity by OSBR shall not apply to, and Contractor shall defend, indemnify and hold harmless (and does hereby release) OSBR (including its officers, directors, employees, and agents) from and against any and all losses, liabilities, claims, demands, damages, fines and penalties, and related expenses (including reasonable legal fees and costs of investigation) with respect to any injury to or death of any person (including employees and agents of OSBR and Contractor), or damage, loss or destruction of any tangible property (including property of OSBR and Contractor and their respective employees and agents), to the extent (and only to the extent) resulting from, attributable to, or arising out of

- a. Contractor's negligence or willful misconduct in performing Services.
- b. Any nonconforming hazardous substance or discrepancy in any manifest as defined in applicable regulations to the extent such nonconformity or discrepancy results from, is attributable to, or arises out of the material breach hereof by Contractor;
- c. Any hazardous material environmental emergency response service to the extent such losses, damages, fines, penalties, or expenses result from gross negligence or willful misconduct by Contractor after arrival at the scene and after reasonable knowledge, and adequate means and time, were available to Contractor to avoid the incident;
- d. The handling, treatment, storage, disposal or other management of any material with respect to which Contractor provides Services to the extent any loss, damage, liability or expense results from Contractor's gross negligence or willful misconduct;
- e. Any pollution, contamination, or release of hazardous or radioactive materials, including all adverse health effects thereof to the extent such pollution, contamination or release results from Contractor gross negligence or willful misconduct. Provided, however, if the loss or damage falls within the scope of subsections c., d., or e., OSBR shall be entitled to indemnification only under such subsection. For purposes of this Section 10, "Contractor" shall include Contractor's employees and Subcontractors and their respective employees and agents.

11. OSBR Warranties, Representations, and Covenants

OSBR warrants, represents, and covenants as follows:

a. Title to Materials, Sites: OSBR has title, free of any claim or encumbrance by others, to the materials and sites with respect to which OSBR may request Services and/or there exists no legal impediment or restraint applicable to OSBR, the materials, the site or otherwise, which may adversely affect the ability of Contractor to perform the Services. As between Contractor and OSBR, title and risk of loss with respect to all materials shall remain with OSBR, who shall be considered the generator of such materials, and OSBR shall execute all manifests as the generator of such materials.

b. Characteristics of Materials: Any materials with respect to which Contractor performs Services either (1) will have the composition and characteristics described in the Order, in the manifest or other documents given to Contractor, or (2) if nonconforming, will not (i) increase the cost of performing the Services; (ii) increase the nature or extent of the hazard or risk undertaken by Contractor in agreeing to perform the Services; and (iii) be such that the facilities designated can no longer be legally used or the Services legally performed.

OSBR will provide Contractor with all relevant information reasonably available to it concerning, without limitation, the composition, quantity, toxicity, or potentially hazardous properties of any materials known or believed to be present at any site for which Services are requested.

(Contractor shall make its own determination as to the precautions appropriate for any material, but Contractor shall accept OSBR's determination in a given situation that a material is hazardous and shall handle it accordingly, whether or not the particular material involved meets the definition of hazardous waste under applicable laws and regulations.)

Contractor shall notify OSBR within a reasonable time of the discovery of material in breach of the warranties set forth in this Section 11. In the event of such breach, OSBR shall be legally responsible for arranging for a lawful manner of disposition of such material, and any such disposition will properly protect Contractor from any increased hazard, cost or risk. OSBR shall fully compensate Contractor for all Services performed in connection with the disposition or return of material pursuant to this Section 11.

c. Characteristics of Site: OSBR will provide Contractor with all relevant information available to it concerning the site for which Services are requested, including, without limitation, any hazards that may be present, summaries and assessments of the site's past and present compliance status, and the status of any filed or pending judicial or administrative action concerning the site.

d. OSBR'S Duties: OSBR shall, at its cost, at such times as may be required by Contractor for the successful, timely, and expeditious completion of Services:

(1) Provide unimpeded and timely access to the site, any necessary third-party property, and an adequate area or areas for Contractor's site office facilities, equipment storage, and employee parking and shall furnish all construction utilities necessary for the Services;

(2) Make all necessary notifications, file all reports, provide Contractor with any necessary governmental allocations or priorities, and obtain all permits and licenses required to be taken out in OSBR's name which are necessary for the Services;

(3) Obtain any process and other transfer of technology licenses which are required for the Services, except where such licenses are identified in an Order as the responsibility of Contractor.

EXCEPT AS SET FORTH ABOVE, OSBR MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WHETHER OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, CONCERNING ANY MATERIALS WITH RESPECT TO WHICH OSBR MAY REQUEST SERVICES.

12. Indemnity by OSBR

Subject to the limitations of Section 13 hereof, any indemnity by Contractor shall not apply to, and OSBR shall defend, indemnify, and hold harmless (and does hereby release) Contractor (including its parent, subsidiary, and affiliated companies and their officers, directors, employees, and agents) from and against, any and all liabilities, claims, demands, losses, damages, fines and penalties, and related expenses (including legal fees and reasonable costs of investigation), to the extent resulting from, attributable to, or arising out of:

- a. Any negligence or willful misconduct of OSBR or compliance by Contractor with directives issued by OSBR;
- b. Any violation of laws, regulations or ordinances by OSBR;
- c. Any material breach by OSBR of any warranties or other provisions hereof;
- d. Any condition existing at a site prior to the arrival of Contractor or over which Contractor had no control;
- e. Any action or inaction of any other OSBR, Subcontractor, independent OSBR or agent of OSBR, or third party;
- f. Any nonconforming hazardous substance or discrepancy in any manifest as defined in applicable regulations except to the extent such nonconformity or discrepancy results from, is attributable to, or arises out of the material breach hereof by Contractor;
- g. Any hazardous material environmental emergency response service except to the extent such losses, damages, fines, penalties, or expenses result from gross negligence or willful misconduct by Contractor after arrival at the scene as to which reasonable knowledge, and adequate means and time were available to Contractor to avoid the incident;

h. Any property or characteristic inherent in, or risk inherent in the handling, treatment, storage, disposal or other management of, any material with respect to which Contractor provides Services, except to the extent any loss, damage, liability or expense results from Contractor's gross negligence or willful misconduct;

i. Any allegation that Contractor is an owner, operator, manager, or person in charge of all or any portion of a site, or arranged for the treatment, transportation, or disposal of, or owned or possessed, or chose the treatment, storage, or disposal site for, any material, with respect to which Services are provided; or

j. Any pollution, contamination, or release of hazardous or radioactive materials, including all adverse health effects thereof, except to the extent such pollution, contamination or release results from Contractor's gross negligence or willful misconduct.

13. Notice/Defense

A party entitled to indemnity under Section 10 or 12 hereof shall be the "Indemnitee" and the party obligated to provide such indemnity shall be the "Indemnitor." The Indemnitee shall promptly provide written notice to the Indemnitor upon the earlier of (a) any assertion of any Claim (as hereafter defined) falling within the Indemnitor's duties to indemnify or (b) learning of facts (other than the knowledge Contractor gains through performing the Services) which may give rise to a duty by Indemnitor to defend, to indemnify, or hold harmless. In the event an Indemnitor is required, during the course of an action or other proceeding, to pay any sum pursuant to Section 10 or 12 hereof which results from, is attributable to or arises out of any cause other than one for which the Indemnitor is required to defend, indemnify or hold harmless, the Indemnitor shall be entitled to recover from the Indemnitee and others to the extent such sums are in excess of those sums which the Indemnitor is required to pay pursuant to Section 10 or 12, as the case maybe.

14. Limitation of Liability

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT:

a. IN NO EVENT SHALL CONTRACTOR BE RESPONSIBLE FOR ANY INCIDENTAL, INDIRECT, IMPACT, OR CONSEQUENTIAL LOSSES, DAMAGES (INCLUDING LOSS OF PROFITS), LIABILITIES OR EXPENSES INCURRED BY OSBR OR ANY THIRD PARTY AS A RESULT OF CONTRACTOR'S PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT OR BY APPLICATION OR USE OF REPORTS PREPARED OR OTHER SERVICES PERFORMED. FURTHER, CONTRACTOR SHALL HAVE NO LIABILITY FOR ANY ACTION INCLUDING DISCLOSURE OF INFORMATION WHERE CONTRACTOR BELIEVES IN GOOD FAITH THAT SUCH ACTION IS REQUIRED BY PROFESSIONAL STANDARDS OF CONDUCT FOR THE PRESERVATION OF PUBLIC HEALTH, SAFETY OR WELFARE, OR BY LAW; AND

b. FOR ALL LOSSES, DAMAGES, LIABILITIES OR EXPENSES (INCLUDING ATTORNEY'S FEES AND COSTS), WHETHER FOR INDEMNITY, OR NEGLIGENCE, INCLUDING ERRORS, OMISSIONS OR OTHER ACTS, OR WILLFUL MISCONDUCT, OR BASED IN CONTRACT, WARRANTY (INCLUDING ANY COSTS AND FEES FOR REPAIRING, REPLACING OR RE-PERFORMING SERVICES OR CURING A BREACH HEREOF), OR FOR ANY OTHER CAUSE OF ACTION (INDIVIDUALLY, A "CLAIM"; COLLECTIVELY, "CLAIMS"), CONTRACTOR'S LIABILITY, INCLUDING THE LIABILITY OF ITS INSURERS, EMPLOYEES, AGENTS, DIRECTORS, AND OFFICERS AND ALL OTHER PERSONS FOR WHOM CONTRACTOR IS LEGALLY RESPONSIBLE, SHALL NOT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEED IN THE CUMULATIVE AGGREGATE WITH RESPECT TO ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, SUCH MINIMUM AMOUNT AS IS PERMITTED BY LAW OR, IF NONE, THE LESSER OF THE TOTAL AMOUNT OF COMPENSATION PAID TO CONTRACTOR HEREUNDER OR ONE MILLION DOLLARS (\$1,000,000); AND

c. ALL CLAIMS AGAINST CONTRACTOR, ITS INSURERS, EMPLOYEES, AGENTS, DIRECTORS OR OFFICERS AND ALL OTHER PERSONS FOR WHOM CONTRACTOR IS LEGALLY LIABLE, SHALL BE DEEMED WAIVED UNLESS AND TO THE EXTENT OSBR SHALL BRING SUIT THEREFOR AGAINST CONTRACTOR WITHIN ONE (1) YEAR AFTER CONTRACTOR'S SUBSTANTIAL COMPLETION OF THE PARTICULAR SERVICES WITH RESPECT TO WHICH THE CLAIM IS MADE.

15. Insurance

Prior to commencing work hereunder, contractor at his/its expense will procure insurance naming OSBR as an additional insured on all liability coverage, more fully defined below, and furnish certificates as to such on standard Accord form certifying the coverage as follows:

a) **Workers' Compensation Insurance** – Contractor shall have and maintain during the life of this contract, workers' Compensation Insurance for his employees connected to the work, in accordance with the Statutes of the State of Louisiana, and any applicable laws, including Employers' Liability with a limit of at least \$1,000,000.

b) **Comprehensive General Liability Insurance** – The Contractor shall have and maintain during the life of this contract, Comprehensive General Liability Insurance. Said Comprehensive General Liability Policy shall contain Contractual Liability and Products/Completed Operations Liability subject to the following limits: **BODILY INJURY of at least \$1,000,000.00 PER PERSON, \$1,000,000.00 PER OCCURRENCE, PROPERTY DAMAGE of at least \$1,000,000.00 PER OCCURRENCE, or BODILY INJURY/PROPERTY DAMAGE of at least \$1,000,000.00 COMBINED SINGLE LIMIT.**

c) **Comprehensive Automobile Liability Insurance** – The Contractor shall have and maintain during the life of this contract, Comprehensive Automobile Liability, including non-owned and hired vehicle, of at least **\$500,000.00 PER PERSON, \$500,000.00 PER OCCURRENCE, PROPERTY DAMAGE/BODILY INJURY of at least \$500,000.00 PER OCCURRENCE, OR BODILY INJURY/PROPERTY DAMAGE of at least \$500,000.00 COMBINED SINGLE LIMIT.**

d) **Contractor's Professional Liability Insurance** – The Contractor shall have and maintain during the life of this contract, Professional Liability Insurance (errors and omissions coverage), of at least **\$1,000,000.00.**

e) **Pollution Liability Insurance** – The Contractor shall have and maintain during the life of this contract, Pollution Liability Insurance, of at least **\$1,000,000.00.**

In the event OSBR requires additional insurance coverage beyond that described above, Contractor will use its best efforts to obtain the coverage; provided, OSBR shall pay any additional costs and premiums associated with obtaining this additional coverage. The certificates shall specify the dates when such insurance expires and shall provide further that OSBR shall be given not less than thirty (30) days' written notice before cancellation of or any material change in such insurance. Contractor and its insurer(s) hereby reserve all rights of subrogation.

The required insurance policy at the time of issue must be written by a company licensed to do business in the State of Louisiana and acceptable to OSBR.

The Contractor shall not cause any insurance to be cancelled or permit any insurance to lapse. All insurance policies shall contain a clause to the effect that the policy shall not be cancelled or reduced, restricted or limited until fifteen (15) days after OSBR has received written notice as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcript from the proper office of the insurer, the location, and the operations to which the insurance applies, the expiration date, and the above-mentioned notice to cancellation clause.

Contractor shall hold harmless, indemnify and defend OSBR, its agents, officers and employees from and against any and all liability, losses, expenses, demands, claims, damages, suits or judgments for or on account of injury to or death of persons or damage to, destruction or loss of property, including but not by way of limitation, damage to property of OSBR and injury or death of its agents, officers and employees, arising out of or in any way occurring directly or indirectly in connection with this contract, or work performed there under, including without limitation, delegable or non-delegable duties imposed upon contractor whether or not any such injury, death or damage may have been caused in part by the negligence of OSBR, its agents, officers and employees, or in whole or in part by the condition of the premises or a vice or defect thereof. Nothing herein shall be construed so as to require contractor to indemnify or hold harmless OSBR for damages caused solely by

the negligence of OSBR. However, Contractors shall be required to defend OSBR against any claim so made, should negligence be alleged to have been joint, several or alternative.

16. Title to Intellectual Property

OSBR may use any final reports of findings, feasibility studies, industrial hygiene and safety, engineering work or other work performed or prepared by Contractor under this Agreement for its internal purposes in connection with the project and/or location for which such work was prepared, but Contractor reserves all other rights with respect to such documents and all other documents produced in performing the Services. All reports will be delivered subject to Contractor's then current limitations. OSBR shall obtain prior written consent from Contractor for any other use, distribution, or publication of such reports or work results.

OSBR shall retain all right, title and interest in and to all intellectual property, including patents, copyrights, trademarks and confidential know-how (collectively, "Intellectual Property") pertaining to OSBR's field of expertise which is developed by OSBR and/or by Contractor in connection with performing the Services.

Contractor shall retain all right, title and interest to all Intellectual Property pertaining to Contractor's field of expertise which is developed by Contractor in connection with performing Services; provided, however, that Contractor shall grant to OSBR a royalty free, nonexclusive, nontransferable license as to such Intellectual Property for use in any of OSBR's facilities.

17. Intellectual Property Rights

Contractor shall use its best efforts to provide Services that do not infringe on any valid Intellectual Property or involve the use of any confidential information that is the property of others unless Contractor is licensed or otherwise has the right to use such Intellectual Property or confidential information. Contractor shall also use its best efforts to inform OSBR of any infringement upon any Intellectual Property that may be reasonably expected to result from the use of the Services; provided, however, that the best efforts of Contractor shall not include a duty to conduct and/or prepare a copyright, trademark or patent search and/or opinion. In any legal proceeding where OSBR is made a defendant for Intellectual Property infringement based upon a Service, the liability of Contractor under this Agreement shall be as limited in Section 9 hereof. Notwithstanding the foregoing, in no event shall Contractor incur any liability for infringement based on OSBR's manufacturing processes or for infringement resulting from Contractor's compliance with OSBR's directions.

18. Technology Fees

In the event the Services require the application of certain of Contractor's Intellectual Property, Contractor shall (a) identify the applicability of technology fees for the utilization of such Intellectual Property prior to or during the process definition phase of a project and

(b) define for OSBR the technical and economic factors associated with application of such technology. If OSBR elects to proceed with evaluation or application of Contractor's Intellectual Property, OSBR and Contractor shall negotiate in good faith, and establish in writing, the appropriate technology fees and payment schedules.

19. Confidentiality, Nondisclosure

In the course of performing Services, to the extent that OSBR discloses to Contractor, or Contractor otherwise acquires, business or technical information that OSBR clearly marks as confidential or proprietary, Contractor will receive and maintain in confidence such information and will exercise all reasonable efforts to avoid the disclosure of such information to others. Contractor will not use such information for any purpose other than the performance of Services for OSBR.

Upon OSBR's request, any reports, drawings, plans, or other documentation (or copies thereof) furnished to Contractor by OSBR shall be returned upon completion of the Services. Contractor may retain one (1) copy of any documents prepared by or furnished to Contractor in the performance of the Services.

OSBR shall treat as confidential all information and data furnished to it by Contractor in connection with this Agreement including, but not limited to, Contractor's technology, formulae, procedures, processes, methods, trade secrets, ideas, inventions, and/or computer programs; and OSBR shall not disclose such information to any third party, except to a related company which has first agreed in writing with Contractor to an obligation of confidentiality identical to the obligations of OSBR as set forth in this Section 19.

Nothing in this Agreement shall prevent or be interpreted as preventing either Contractor or OSBR or either party's employees or agents from disclosing and/or using said information or data (a) when the information or data are actually known to the receiving party before being obtained or derived from the originating party; (b) when the information or data is generally available to the public without the receiving party's fault at any time before or after it is acquired from the originating party, (c) where the information or data are obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the originating party with respect thereto; (d) where a written release is obtained by the receiving party from the originating party; (e) five (5) years from the date of the receipt of such information; (f) where permitted by this Agreement; or (g) where disclosure is required by process of law, provided that the party subject to such process shall promptly notify the originating party and allow the originating party the opportunity to resist such process. OSBR and its related companies shall be entitled to use, for themselves only, any part of Contractor's Services. Although OSBR is entitled to multiple use, Contractor's liability is limited to the first application of the Services. When Contractor's know-how, inventions, and/or Contractor's patent rights are involved, multiple use by OSBR may involve payment of technology fees to Contractor for each such use, as shall be established by mutual agreement of the parties pursuant to Section 18 herein.

20. Force Majeure

Neither party shall be deemed in default of this Agreement or any Order to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, strikes, or lockouts, acts of governmental agencies or officials, and changes in laws, statutes, regulations or ordinances.

If any such force majeure condition occurs and will materially delay or impair performance hereunder, then the party whose performance is delayed or impaired by such condition shall give prompt written notice to the other party as to the nature and anticipated extent of the delay or impairment. The party receiving said notice may then elect to either (a) terminate the affected Service or any part thereof or (b) suspend the affected Service or any part thereof for the duration of the force majeure condition and resume performance once the force majeure condition ceases. Unless written notice electing option (a) under this Section 20 is given within three (3) days after receipt of notification of the force majeure condition, then option (b) shall be deemed to have been elected.

21. Affirmative Action

Unless this Agreement is exempted by law, Contractor shall comply with Executive Order 11246, the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and the rules and regulations issued pursuant to said Order and Acts, as amended, and all of which are incorporated herein by reference. Upon execution of this Agreement and upon request, Contractor shall furnish to OSBR an executed Certificate of Nonsegregated Facilities.

22. Notice

a. Contractor and OSBR shall notify each other of (1) service of any notice of violation of any law, regulation, permit, or license relating to the Services; (2) initiation of any proceedings to revoke any permits or licenses which relate to such Services; (3) revocation of any permits, licenses, or other governmental authorizations relating to such Services; or (4) commencement of any litigation that could affect such Services.

b. Any notice, communication, or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered in person or sent by telex, wire, or by certified mail, return receipt requested, postage prepaid, to the address of the respective party set forth below, or to such other address for either party as that party may by written notice designate.

**OSBR Land, L.L.C.
1614 B Oretha Castle Haley Blvd
New Orleans, LA 70113**

Attn: Corporate Counsel

CONTRACTOR

OSBR shall also provide a copy of such notice to the Contactor's office performing the specific Order in question.

23. Assignment

Neither party shall assign or delegate any of its duties or obligations under this Agreement without the prior written consent of the other. Notwithstanding the foregoing, Contactor may assign or subcontract all or any portion of the Services to one or more subsidiaries of Gulf Coast Housing Partnership, Inc. or affiliates of Contactor or to such other persons as Contactor deems appropriate. Further, Contactor may upon notice to OSBR assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Services or sale of any goods pursuant to this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the parties' respective successors and assigns.

24. Attorney Fees

In the event either party shall be successful in any action (a) alleging breach of this Agreement; (b) to construe or enforce the terms and conditions of this Agreement, including nonpayment of invoices; or (c) to enjoin the other party from violating any term or condition of this Agreement, the prevailing party shall, to the maximum extent permitted by law, be entitled to recover its reasonable legal fees, costs, and expenses in bringing and maintaining any such action.

25. OSBR/Contractor Representatives

OSBR and Contactor shall each designate in writing an individual or individuals to serve as their representative(s) during the course of this Agreement, and for each Order. Selection of representatives shall be based upon qualifications and experience relating to the nature of the Services being performed. Each such representative shall be authorized to act on behalf of and to bind the designating party as to all matters pertaining to the Agreement and the Order(s).

26. Governing Law

This Agreement shall be governed by and interpreted pursuant to the laws of the state or jurisdiction where the particular Services are to be performed.

27. Waiver of Terms and Conditions

The failure of either Contactor or OSBR in anyone or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement or the waiver of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

28. Other Contractual Provisions

Under §30.48 and by reference OMB Circular A-110, Contractor and their subcontractors agree to the following:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the small purchase threshold, currently \$100,000).
- b. Termination for cause and for convenience by the grantee or sub grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of small purchase threshold, \$100,000)
- c. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$25,000 (fixed at 41 U.S.C. 403(11) by grantees and their contractors or sub grantees). In all hiring or employment made possible by, or resulting from this contract, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, action will be taken to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

- d. Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants in excess of \$2000 for construction or repair.) Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provided that contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. All suspected or reported violations will reported to the EPA.
- e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees when required by Federal grant program legislation) Contractor shall pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. Contractor shall also be required to pay wages not less than once a week.
- f. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and sub grantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers) If Contractor employs mechanics or laborers, the following requirements apply: Contractor shall be required to compute the wages on the basis of a standard 40 hour work week. Work in excess of 40 hours must be compensated at a rate of not less than 1.5 times the basic rate of pay. Contractor must ensure that laborers and mechanics are not required to work in surroundings or under conditions that are: unsanitary, hazardous, or dangerous.
- g. Except as otherwise required by statute, Contractor shall provide, for all contracts in excess of small purchase threshold of \$100,000:
 - i. A bid guarantee equivalent to five percent of the bid price, consisting of a bid bond, certified check, or other negotiable instrument accompanying a proposal as assurance that the contractor shall execute contractual documents as may be required within the time specified.
 - ii. A performance bond for 100% of contract price. This bond is one executed to secure fulfillment of all contract obligations.
 - iii. A Payment bond for 100% of contract price. This bond is one executed to assure payment as required by statute of all persons supplying labor and material in the execution of work provided for in the contract.

- iv. Where bonds are required, they shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31CFR part 223, "Surety Companies Doing Business with the United States".
- h. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract, as required in 30.48(e) by reference to OMB Circular A-110 Appendix A.5 as follows: Rights to Inventions Made Under a Contract or Agreement – Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by EPA.
- i. Audits and Examinations (Contracts in excess of small purchase threshold, \$100,000). OSBR, EPA, the Comptroller General of the United States, or any of their duly authorized representatives shall be given access by contractor to any books, documents, papers and records of the contractor that are pertinent to this agreement and work performed for the purpose of making audits, examinations, excerpts and transcriptions. Furthermore, all drawings, specifications, design, models, photographs, reports, surveys, and other data produced by the Contractor in connection with this Agreement are and shall remain the property of OSBR. Contractor shall have the right to retain copies of all such materials. Use of any such materials by Contractor shall be subject to client confidentiality and similar limitations, and shall be at Contractor's sole risk.
- j. Contractor is responsible for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.
- k. Compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.). Violations shall be reported to the Federal Awarding Agency and the Regional Office of EPA. (Contracts, subcontracts, and sub grants of amounts in excess of \$100,000). Contractor agrees to comply with all applicable standards, orders or regulations pursuant to the Clean Air Act and the Federal Water Pollution Control act. Violations shall be reported to the US EPA.
- l. Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan

issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- m. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Contractor shall certify that it has not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency; a member of Congress, officer or employee of Congress; or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C 1352. Contractor shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. (Contracts, subcontracts, and sub grants of amounts in excess of \$100,000)
- n. Debarment and Suspension (E.O.s 12549 and 12689) Contractor shall not be listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension". Furthermore, contractor shall provide the required certification regarding its exclusion status and that of its principal employees.

29. Severability; Survival

Each provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of this Agreement. Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the parties' intent. For example, if the gross negligence standard in Sections 10 and 12 is unenforceable under an applicable "anti-indemnity" statute, but a sole negligence standard is enforceable, the sole negligence standard shall be automatically substituted therein. The terms and conditions set forth herein shall survive the termination of this Agreement.

28. Entire Agreement

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of Services by Contactor to OSBR and shall be deemed incorporated in all Orders unless otherwise agreed to in writing by both OSBR and Contactor. In the event of conflict, this Agreement shall govern. Any modification or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgment or other form is hereby expressly objected to by OSBR and shall not operate to modify the Agreement, and Contactor's acceptance of an Order is expressly conditioned on and limited to assent to the provisions hereof. OSBR may accept these terms and conditions by execution of this Agreement or by authorizing Contactor to begin work. This Agreement may be amended only by a written instrument signed by both parties.

30. Statutory Employer

For work performed in the State of Louisiana, any subcontractor and Contractor agree that OSBR and Contractor are designated as statutory employers of subcontractor's direct and statutory employees, pursuant to La. R.S. 23:1061 and acknowledge that the services required of subcontractor and its direct and statutory employees pursuant to this Agreement are an integral part of and essential to OSBR's and Contractor's ability to generate goods, products and services.

IN WITNESS WHEREOF, OSBR and Contractor agree to the foregoing (INCLUDING THE LIMITATIONS ON LIABILITY IN SECTIONS 8-14) and have caused this Agreement to be executed by their respective duly authorized representatives as of the date set forth above.

CONTRACTOR

By: _____

Title: _____

OSBR LAND, L.L.C.

By: _____

Title: _____

ATTACHMENT B
BID PROPOSAL PAGE

BID PROPOSAL PAGE
EXCAVATION OF UST SYSTEM, HYDRAULIC LIFT, SERVICE BAY SUMP;
AND IMPACTED SOIL
1320 HIGHLAND ROAD, BATON ROUGE, LOUISIANA

CONTRACTOR’s firm fixed unit prices shall include all labor, equipment, delivery, submittals, supplies, materials, PPE, per diem, insurance, taxes and all other items necessary to accomplish all work and complete requirements per the Specifications. With the exception of “Lump Sum” bid items, the quantities provided (e.g. assumed volume of fluids, assumed amount of excavated soil, and amount of backfill) are provided to estimate the total cost of the project. If the assumed quantities below are not valid, then the cost of the work will be calculated as the actual quantities times the unit cost. In the event that the total bid cost is exceeded because of work scope changes or invalid assumptions, written approval must be received by OSBR prior to proceeding at the unit rates provided. No adjustment in quantity will be allowed for “Lump Sum” unit bid items.

Bid Item No.	Description	Qty	Unit	Unit Cost	Total
1.	Kickoff & public meetings	1	Lump Sum	\$ _____	\$ _____
2.	Mobilization and Demobilization, preparation, establish site security, site controls, and all costs not specifically included as a separate bid item.	1	Lump Sum	\$ _____	\$ _____
3.	Excavate surface pavement over the UST system; hydraulic lift; and, service bay drain to be removed; stockpile on-site.	1,500	Square Feet	\$ _____	\$ _____
4.	Transport and dispose/recycle removed surface pavement.		Tons ⁽²⁾	\$ _____	\$ _____
5.	Excavate, separately stockpile, and secure excavated soil		In-place Cubic yards ⁽¹⁾	\$ _____	\$ _____
6.	Waste characterization sampling and analysis. Includes subcontracted analytical costs for parameters required by disposal facility and completion of related waste profile documentation.	1	Sample	\$ _____	\$ _____
7.	Remove residual fluids and wash out tanks. Dispose/recycle generated liquids.	2,000	Gallons ⁽³⁾	\$ _____	\$ _____

Bid Item No.	Description	Qty	Unit	Unit Cost	Total
8.	Remove four (4) USTs of various sizes and associated piping; hydraulic lift; and service bay sump completely. Dispose of tanks and associated piping, and other solid waste (not including soil or concrete).	1	Lump sum	\$ _____	\$ _____
9	Confirmatory closure and backfill sampling and analysis (includes subcontracted analytical laboratory costs – 48 hour TAT)				
9a	BTEX, 8260B	21	Sample	\$ _____	\$ _____
9b	MTBE, 8260B	21	Sample	\$ _____	\$ _____
9c	TPH-GRO, 8015B	21	Sample	\$ _____	\$ _____
9d	TPH-DRO, 8015B	21	Sample	\$ _____	\$ _____
9e	TPH-ORO, 8015B	21	Sample	\$ _____	\$ _____
9f	PAHs, 8270C	21	Sample	\$ _____	\$ _____
9g	Eight RCRA Metals, 6000/7000 series	21	Sample	\$ _____	\$ _____
9h	VPH, MADEP	0	Sample	\$ _____	\$ N/A
9i	EPH, MADEP	0	Sample	\$ _____	\$ N/A
10.	Transportation of hydrocarbon impacted soil to an LDEQ approved disposal facility.	500	In-place Cubic yards ⁽¹⁾	\$ _____	\$ _____
11.	Disposal of hydrocarbon impacted soil at an LDEQ approved disposal facility.	500	In-place Cubic yards ⁽¹⁾	\$ _____	\$ _____
12.	Pump excessive rain/groundwater accumulations from excavations to nearest storm drain. Contractor shall supply all pumps, equipment, piping and labor.		Gallon	\$ _____	\$ _____
13.	Standby-time between excavations while waiting for direction from OSBR to backfill or conduct additional excavation.	1	Day	\$ _____	\$ _____
14.	Demobilization and remobilization in lieu of standby time, at OSBR's option.	1	Event	\$ _____	\$ _____
15.	Place and compact excavated and/or clean site soils as backfill. Soils shall be sloped to drain and prevent the accumulation of rain water.	250	In-place Cubic Yards ⁽¹⁾	\$ _____	\$ _____
16.	Supply and deliver clean backfill.	250	Cubic Yards ⁽¹⁾	\$ _____	\$ _____

Bid Item No.	Description	Qty	Unit	Unit Cost	Total
17.	Place Hydro Seed, Bermuda grass or an approved alternative on disturbed areas.	1,500	Square feet	\$ _____	\$ _____
18.	UST Closure Report (prepare, certify and submit to OSBR for review and comment)	1	Lump Sum	\$ _____	\$ _____
				TOTAL	\$ _____

Notes:

1. The pay units for In-Place Cubic Yards will be calculated using the results of a survey of the final excavated area, the depth of the excavation, less any remaining concrete or other structure left in the excavation
2. The pay units for tons are to be determined by the scales and documentation provided at the receiving disposal or recycling facility.
3. The pay units for gallons are to be determined by the documentation provided by the receiving disposal or recycling facility.

ANALYTICAL LABORATORY

Contractor will submit all samples for analytical laboratory analysis to an LDEQ accredited laboratory. The following laboratory has been selected to perform sample analyses necessary for this project:

_____.

WASTE DISPOSAL/RECYCLING FACILITIES

All waste generated as a result of site activities is assumed to be non-hazardous unless analytical laboratory data indicates otherwise. The contractor will transport wastes generated as a result of this project to the following disposal/recycling facilities:

Soil - _____

Water - _____

Concrete and Other Construction Debris - _____

USTs - _____

PROPOSED SCHEDULE

Contractor will complete Scope of Work within _____ calendar days of "Notice To Proceed".

CERTIFICATION: The signature on the Bid Proposal Page is that of an authorized representative of the corporation, partnership, or other legal entity and **THE BID IS ACCOMPANIED BY A CORPORATE RESOLUTION, CERTIFICATION AS TO THE CORPORATE PRINCIPAL, OR OTHER DOCUMENTS INDICATING AUTHORITY.**

It is understood, that the prices shown in the schedule of items bid are in full accordance with conditions, terms and specifications of this bid proposal; and that any exception taken thereto may disqualify this bid.

*FIRM'S LEGAL NAME: _____

ADDRESS: _____

BY (please print): _____

SIGNATURE: _____

DATE: _____

TELEPHONE#: _____

FAX#: _____

*Complete legal name of firm as listed above must appear on all forms, contracts and insurance certificates concerning this bid.