

**HAZARDOUS MATERIALS ABATEMENT AGREEMENT**

**THIS HAZARDOUS MATERIALS ABATEMENT AGREEMENT** (“Agreement”) is entered into effective      , 20  , by and between Regents of the University of Minnesota, a Minnesota constitutional corporation, acting through its Department of       (“University”) and      , a       (“Contractor”).

University and Contractor agree as follows:

**1. Term of Agreement**. Contractor shall commence the Work (as defined in Section 2) for the       project (#     ) within one (1) week after receipt of a notice to proceed and shall substantially complete the Work

within       (     ) calendar days, OR

on

(the “Term”). Notwithstanding the foregoing sentence, this Agreement shall remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled, or the Agreement has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after the Term, to comply with any provision of this Agreement intended for University’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement.

**2. Work.**

2.1. Contractor shall furnish all labor, equipment, and materials to perform the hazardous materials abatement work set forth in the Contract Documents (“Work”) with the degree of skill, care, and judgment exercised by recognized professional firms performing work of a similar nature on a national basis and to University’s satisfaction. The nature of the Work is referred to as abatement even though the Work may involve removal, encapsulation, repair, or some other form of abatement. Contractor understands that time is of the essence in this Agreement.

2.2. Contractor, at its sole cost and expense, shall maintain all licenses, permits, and certifications necessary to perform the Work.

2.3. Contractor shall perform the Work in compliance with all applicable federal, state, and local laws, statutes, regulations, ordinances, rules, directives, and orders relating to hazardous material abatement, storage, hauling, and disposal (“Laws”), including without limitation, Occupational Health and Safety Administration, United States Environmental Protection Agency, and State of Minnesota Department of Health laws and regulations, and University’s “Technical Specifications for Asbestos Abatement at the University of Minnesota” prepared by Nova Environmental Services, Inc. dated May 28, 1992, modified March 2012. Contractor represents and warrants that it is fully aware of the foregoing Laws and their requirements. If the Laws’ requirements vary, Contractor shall comply with the strictest or most stringent requirements.

2.4. Prior to starting the Work, Contractor shall provide to University the names of all hazardous material abatement employees and subcontractors, a certification that those employees have received all required training, and Contractor’s Abatement Plan addressing the specific hazards for the Work.

2.5. Contractor shall provide all notices required by Laws. Contractor shall provide to University copies of all notices and other communication relating to the Work sent to and received from local, state, or federal governmental authorities.

2.6. Contractor shall perform the Work without damage to or contamination of University’s property. Where University property is damaged or contaminated, Contractor shall, at its sole cost and expense, restore the property to its original condition or at University’s option, Contractor shall upon demand reimburse University for the costs incurred by University in repairing and restoring the property.

2.7. Contractor may use areas immediately adjacent to Work site, to the extent such areas are unoccupied and available. Contractor agrees to maintain a low profile during the Work and to minimize disruption of normal activities at and near the Work site.

2.8. Contractor is solely responsible for the safety of the public, its employees, subcontractors, suppliers, and any other person allowed by Contractor to enter the Work area.

**3. Consideration and Terms of Payment.** The consideration for all services performed or supplied by Contractor under this Agreement shall be paid by University as follows:

3.1. Total Obligation. Subject to adjustment made by written change orders, University’s total obligation to Contractor under this Agreement shall be paid as follows:

University shall pay Contractor for performance of the Work on a time and materials basis at the hourly rates set forth in Contractor’s Proposal (as defined in Section 4); provided, however, in no event shall University’s total payment to Contractor exceed       and   /100 Dollars ($     ) without the prior written approval of University, OR

University shall pay Contractor for the Work a stipulated lump sum amount of       and   /100 Dollars ($     ).

3.2. Subcontractor Payment. Contractor shall not markup work performed by subcontractors.

3.3. Frequency of Invoicing and Terms of Payment. Contractor shall submit invoices monthly or at the end of the Work, describing in reasonable detail the services (and goods, if any) provided in the preceding month. Payment shall be made by University within thirty (30) days after University’s receipt of an invoice and acceptance of services rendered under this Agreement. Notwithstanding anything to the contrary in this Agreement, University may withhold payment to Contractor hereunder if and for so long as University finds any of Contractor’s services to be defective, untimely, unsatisfactory or Contractor otherwise fails to perform any of its obligations or otherwise is in default; provided, however, that any such holdback shall be limited to an amount sufficient in University’s reasonable opinion to cure any such default or failure of performance by Contractor.

3.4. Final Payment. Prior to final payment, Contractor shall submit the following to University: two (2) sets of records (log book, air monitoring reports, permits and notifications, disposal receipts, abatement plan, final test certification), everything required by applicable Laws, all submittals required by University in the Work Plan, and any other documents required by University.

**4. General Terms and Conditions.**

4.1 The terms and conditions contained in this Agreement shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Agreement. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.

4.2 The following are incorporated into this Agreement by reference: the General Conditions of the Contract for Construction, American Institute of Architects, Inc. (AIA) Document A201-2007 as modified by University (the “General Conditions”); the Request for Proposal issued by University, if any; the Proposal Contractor submitted in response to the Request for Proposals, as modified and accepted in writing by University and Contractor (“Proposal”), if any; and the Specification and/or Work Plan made available to Contractor during the solicitation process, if any.

4.3 Notwithstanding anything to the contrary in the Contract Documents, if, at any time, University, its agent, or any regulatory official determines that Contractor’s practices are in violation of pertinent and applicable Laws, or are endangering workers, the public, or any University facility, Contractor will immediately stop work and take corrective action(s). Any costs resulting from such a stop work order, and any costs involved in restarting the Work, will be borne solely by Contractor and will not be considered as a basis for an increase in the contract amount.

4.4. Insurance. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall comply with the following insurance requirements.

4.4.1 At all times during the Term, Contractor shall maintain—and ensure that any subcontractors maintain—the following insurance:

|  |  |  |
| --- | --- | --- |
| **General Liability** | | |
| General Aggregate (per project) | $2,000,000 | |
| Products/Completed Operations | $1,000,000 | |
| Personal/Advertising Injury | $1,000,000 | |
| Each Occurrence | $1,000,000 | |
| Fire Damage (any one fire) | $50,000 | |
| Medical Expense (any person or occurrence) | $5,000 | |
|  |  | |
| **Contractor’s Pollution Liability:** |  | |
| Each Occurrence or Claim | $2,000,000 | |
| Aggregate | $2,000,000 | |
|  |  | |
| **Asbestos Abatement Liability** | | |
| Each Occurrence or Claim | $2,000,000 | |
| Annual Aggregate | $2,000,000 | |
|  |  | |
| **Automobile Liability** | | |
| Combined Single Limit:  Including : Owned/Non-Owned/Hired vehicles  Pollution Liability: MCS-90 Endorsement and CA 99 48 Endorsement | | $1,000,000 |
|  | |  |
| **Umbrella Liability** | | $5,000,000 |
|  | | |
| **Worker’s Compensation** | Statutory | |
|  |  | |
| **Employer’s Liability** | | |
| Each Accident | $1,000,000 | |
| Disease - Policy Limit | $1,000,000 | |
| Disease – Each Employee | $1,000,000 | |
|  |  | |
|  | | |

4.4.2 Other Insurance Conditions.

4.4.2.1 Contractor shall provide Certificates of Insurance to University prior to commencement of the Work.

4.4.2.2 Each policy shall be endorsed to provide that (i) it shall not be cancelled, non-renewed, or materially changed unless at least thirty (30) days’ prior written notice of cancellation or change is given to University and (ii) the policy is primary and any insurance maintained by University is excess and non-contributory. No endorsements, except those expressly stated herein, may be included on any policy limiting coverage.

4.4.2.3 All policies shall be written by a reputable insurance company acceptable to University or with a current AM Best Rating of A-VII or better, and authorized to do business in Minnesota. Contractor shall waive and require all subcontractors and consultants of every tier to waive all subrogation and recovery rights against University.

4.4.2.4 Regents of the University of Minnesota shall be named as an additional insured for ongoing and completed operations by endorsement on each general liability policy on ISO forms CG 2010 07 04 and CG 2037 07 04 or their equivalent for claims arising out of the acts or omissions of Contractor, its subcontractors or consultants, and anyone else for whom Contractor is liable.

4.5. Indemnification; Release. Notwithstanding anything to the contrary in the Contract Documents, Contractor hereby releases and agrees to indemnify, defend, and hold harmless University from and against any and all damage, loss, liability, claims, causes of action, judgments, costs and expenses (including attorneys’ fees and costs) arising or alleged to arise out of or resulting from (a) the Work; (b) exposure to hazardous materials; and/or (c) any negligent or wrongful act, error, or omissions or breach of Agreement by Contractor, its employees, or any of its subcontractors or suppliers.

**5.** Terms not defined in this Agreement shall have the meanings assigned to them in the General Conditions.

6. University and Contractor, each for itself represents that it is duly authorized to enter into this Agreement, and undersigned representatives of University and Contractor each hereby represents that they are duly authorized to execute this Agreement, which Agreement constitutes the entire agreement between University and Contractor and supersedes and merges all earlier understandings written or oral.

7. In the case of any inconsistency between this Agreement and the other Contract Documents, subject to the provisions of Section 1.2.4 of the General Conditions, the terms of this Agreement shall control.

8. This Agreement and any amendments to it may be executed separately and in counterparts, and each counterpart shall be deemed an original, all of which together shall constitute one and the same Agreement. If any signature is delivered by facsimile transmission or by email delivery of a pdf. format file, such signature shall be valid and binding.

**AGREED.**

|  |  |
| --- | --- |
| **Contractor:**  By:  Date:  Name:  Title: | **Regents of the University of Minnesota**  By:  Date:  Name: Scott Everson  Title: Director  Capital Project Management |
|  | ***--OR--***  By:  Date:  Name: Bruce L. Gritters  Title: Assistant Vice President  Capital Project Management |
|  | ***--OR--***  By:  Date:  Name: Alice Roberts-Davis  Title: Vice President of University Services |