

RESOLUTION NO. 26479

A RESOLUTION AUTHORIZING THE CHATTANOOGA-HAMILTON COUNTY REGIONAL PLANNING AGENCY TO ENTER INTO AGREEMENTS WITH PM ENVIRONMENTAL, S&ME, AND TERRACON TO CONDUCT NECESSARY ASSESSMENTS AND DEVELOP PLANS FOR THE REQUIREMENTS OF THE EPA GRANT FOR AN AMOUNT NOT TO EXCEED TWO HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that is hereby authorized that the Chattanooga-Hamilton County Regional Planning Agency to enter into agreements with PM Environmental, S&ME, and Terracon to conduct necessary assessments and develop plans for the requirements of the EPA Grant for an amount not to exceed \$215,000.00.

Adopted: November 2, 2010

/mms

AGREEMENT FOR SERVICES

This AGREEMENT is between the Chattanooga-Hamilton County Regional Planning Agency ("RPA") and _____ ("Consultant") for Services to be provided by Consultant for RPA on the _____ ("Project"), as described in Attachment A to this Agreement, pursuant to the terms and conditions of this agreement.

1. **Scope of Services.** The consultant shall perform the Services as described in Attachment A to this Agreement, in accordance to the applicable federal, state, and local regulations and laws. Portions of the Services may be subcontracted as agreed by both parties. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
2. **Acceptance.** RPA agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for RPA at RPA's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event RPA uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party.
3. **Change of Work.** RPA may request changes to the scope of Services by altering or adding to the Services to be performed. If RPA so requests, Consultant will return to RPA a supplemental proposal with an adjustment to the Services and fees for the requested changes. Any change of work must be authorized in writing by RPA. Fee schedules included in the original proposal are valid for the entire period of this agreement.
4. **Compensation and Terms of Payment.** RPA shall pay a total amount of _____ for the Services performed. Consultant may invoice RPA (to the attention of the RPA project manager) monthly in amount which is consistent with the amount of services completed. A progress report shall accompany the invoice providing sufficient detail to justify the percentage of completion. The payment is due 30 days upon receipt of invoice.
5. **Third Party Reliance.** This Agreement and the Services provided are for Consultant's and RPA's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to RPA, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with RPA, however RPA understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.
6. **Insurance.** Consultant shall purchase and maintain during the life of the agreement, insurance coverage which will satisfactorily insure him/her against claim and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as specified in Attachment B.

Prior to issuance of the Notice to Proceed by RPA, Consultant shall have on file with RPA certificates of insurance acceptable to RPA. Upon completion of all Services, obligations, and duties provided for in this

Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this section shall survive.

- 7. Indemnity/Statue of Limitations.** Consultant agrees to fully indemnify and hold harmless RPA and any of its officers, employees and designated agent from all loss, damage, cost, or expenses specifically including attorneys' fees and other expenses of litigation incurred by or on behalf of RPA and any of its officers, employees or commissioners arising out of Consultants' alleged or actual negligent performance of Services under this Agreement, including errors or omissions.

RPA agrees to fully indemnify and hold harmless Consultant and any of its officers, employees, or designated agents from all loss, damage, cost, or expenses specifically including attorney's fees and other expenses of litigation incurred by or on behalf of the Consultant and any of its officers, employees or designated agents arising out of RPA's negligence to the extent provided by the Tennessee Governmental Tort Liability Act, T.C.A.. 29-20-201 et seq.

- 8. Standard of Care.** Consultant shall perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. Consultant makes no warranty or guarantee, either expressed or implied, as part of this agreement.
- 9. Consequential damages.** Neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; or for any special, consequential, indirect, punitive, or exemplary damages.
- 10. Dispute Resolution.** RPA shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. RPA shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Tennessee law.
- 11. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. RPA understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Consultant will restore the site to a reasonable extent.
- 12. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculation Agreement Reference Numbers, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant.
- 13. Access to Records.** The Consultant and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and make available such materials for audit and review in their offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract for inspection by the RPA and/or any other agency

participating in the funding of this agreement, or any authorized agents thereof; copies shall be furnished if requested.

14. **Utilities.** RPA shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.

15. **Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including RPA, or other parties present at the site.

16. **Termination.** Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

17. **Compliance with Laws.** Consultant will comply with all relevant and applicable Federal laws and regulations for work funded an EPA Brownfields Grant, including but not limited to 40CFR Part 31 and 40 CFR Part 35 Subpart O, ASTM Standard E-1527-05 and E-1903-97, OSHA Work Health and Safety Standards, Uniform Relocation Act, National Historic Preservation Act, Endangered Species Act, Section 404 of the Clean Water Act, MBE/MWE requirements, Contract Work Hours and Safety Standards Act, Anti-Kickback Act, Section 504 of the Rehabilitation Act, as well as the 2010 EPA Brownfields Assessment Grant Terms and Conditions. Consultant will also comply with any applicable State statutes, regulations, and standards.

18. **Communications.** Any communication required by this Agreement shall be made in writing to the address specified below:

Consultant

RPA: Chattanooga-Hamilton County Regional Planning Agency
1250 Market Street, Suite 2000
Chattanooga, TN 37402

19. **Completion Date.** Consultant shall commence services on the project immediately upon execution of this Agreement and shall complete all tasks no later than May 30, 2013.

By: _____ Date: _____ By: _____ Date: _____
Name/Title: _____ Name/Title: _____
Chattanooga-Hamilton County Regional Planning Agency

Attachment A

Proposal and Scope of Services

Attachment B

REQUIREMENTS FOR INSURANCE COVERAGE

The Contractor shall not commence work under these Contract Documents until he has obtained all insurance required herein nor shall the Contractor allow any Subcontractor to commence work on his subcontract until similar insurance required of the Subcontractor has been obtained by the Subcontractor. Insurance shall be placed by the Contractor with one or more insurance carriers licensed to do business in the State of Tennessee. Each insurance policy shall be renewed ten (10) days before the expiration date of the policy. Certificates of insurance shall be filed with the City prior to commencement of the work. These certificates shall contain a provision that coverage's afforded under the policies will not be changed or canceled unless at least fifteen (15) days' written notice has been given to the city. The Contract shall not be binding upon the city until the insurance coverage required herein has been obtained and certificates have been filed with the City.

Adequate insurance coverage shall be maintained by the Contractor at all times. Failure to maintain adequate coverage shall not relieve the Contractor of any responsibilities or obligations under these Contract Documents. In the event any insurance coverage is canceled or allowed to lapse, the Contractor will not be permitted to prosecute the work until adequate and satisfactory insurance has been obtained and certificates of insurance furnished to the City. Failure to keep insurance policies in effect will not be cause for any claims for extension of time under these Contract Documents.

All such policies shall be subject to approval by the City Attorney. Should the City Attorney at any time in his sole discretion determine that the insurance policies and certificate provided may not be sufficient to protect the interests of the City because of the insolvency of the insurance company or otherwise, the Contractor shall replace such policies with policies meeting his approval.

The Contractor shall procure and maintain at his own expense, during the Contract Time, insurance as hereinafter specified:

Workmen's Compensation Insurance that shall protect the Contractor against all claims under applicable state workmen's compensation laws shall be maintained. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a workmen's compensation law. This policy shall also include an endorsement providing coverage in all states in which work is performed. The Contractor shall require all the Subcontractors to provide similar Workmen's Compensation Insurance for all the Subcontractors' employees on the work unless such employees are covered by the protection afforded by the Contractor. The liability limits shall not be less than that required by statute.

General Public Liability and Property Damage Insurance that shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries including death, to members of the public or damage to property of others arising out of any act or omission of the Contractor or his agents, employees, or Subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the successful bidder to defend and indemnify the City of Chattanooga against such claims or suits.

To the extent that the work may require blasting, explosive conditions or underground operation, the comprehensive general public liability and property damage coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

The comprehensive general public liability and property damage coverage shall also protect the Contractor

against all claims resulting from damage to:

1. Private driveways, walks, shrubbery and plantings;
2. Public utility facilities; and
3. U.S. Government monuments.

The liability limits shall not be less than:

Bodily Injury	\$ 500,000 each person
	\$1,000,000 each occurrence
Property Damage	\$ 250,000 each occurrence
	\$ 500,000 aggregate

The general public liability and property damage insurance shall carry an endorsement in form satisfactory to the City to the effect that the Contractor shall save harmless the City from any claims and damage whatsoever, including patent infringement. General public liability and property damage insurance shall be kept in force at all times during the course of the work until such time as the work covered by these Contract Documents has been completed and accepted by the City.

Comprehensive Motor Vehicle Liability and Property Damage Insurance that shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall not be less than:

Bodily Injury	\$ 250,000 each person
	\$ 500,000 each occurrence
Property Damage	\$ 100,000 each occurrence

The contractor shall provide verification of comprehensive general liability insurance, workers compensation insurance, pollution coverage insurance and professional liability insurance for Directors and Officers for errors and omissions. The general liability insurance and professional liability insurance shall not be less than \$1 million per occurrence, \$ 2 million aggregate. The pollution coverage shall be adequate to cover the type of assessments performed.

I have read and agree to comply with the above issuance coverage requirements.

(Signature of Contractor)

(Print the Name of Contractor)

(Title and Name of Company)

(Date)