

**MASTER SERVICE AGREEMENT
CONTRACT NO. 455-18-8656
ANALYTICAL SERVICES FOR SITE REMEDIATION
BETWEEN
RAILROAD COMMISSION OF TEXAS AND
TESTAMERICA LABORATORIES, INC.**

The State of Texas, through the **RAILROAD COMMISSION OF TEXAS** ("RRC"), a state agency located at 1701 N. Congress Ave., Austin, Texas 78701 and **TESTAMERICA LABORATORIES, INC.** ("Contractor"), located at 1733 N. Padre Island Drive, Corpus Christi, TX. 78408, (individually "Party"; collectively "Parties") enter into this contract agreement ("Contract") for Analytical Laboratory Services pursuant to Texas Government Code Chapters 2155, 2156.

I. SERVICES AND CONTRACT DOCUMENTS

1.01. SERVICES REQUIRED. In accordance with the terms and conditions of the Contract, including all contract documents incorporated by reference, Contractor shall be Environmental Laboratory (NELAP) accredited and maintain accreditation throughout the term of the contract, including renewal periods (if any), and shall provide professional environmental analytical laboratory services, including all labor, qualified personnel, management, coordination, equipment, materials, services, and incidentals to fulfill all requirements and deliver all services required under the Contract in accordance with applicable method protocols and published standards for analytical methods, laboratory QAPP, and all rules, regulations, and laws related thereto. Contract Documents include:

- a. This Master Service Agreement Contract No. 455-18-8656.
- b. Exhibit A, RRC's Request for Proposal 455-18-8656 ("RFP") including all associated attachments, appendices, and addenda, as amended with the following Contractor's Exceptions accepted by RRC:
 - i. RFP, **PART II SCOPE OF WORK**, Article 2.1.2 **Sample Handling Requirements**. After the last paragraph of article 2.1.2, add the following:
Such penalties or liquidated damages shall apply only to the extent that RRC has informed Contractor of the sample delivery schedule in advance, Contractor has specifically committed after such notice to the turnaround time for delivery, and samples arrived within two (2) days of the schedule without significant differences in the sample volume or analysis parameters from the advance notice. In the event delays are due to sample matrix interferences beyond the control of Contractor's laboratory, RRC shall be informed promptly and penalties shall not apply.
 - ii. RFP, **PART II SCOPE OF WORK**, Article 2.18.6. **Minimum Required Amounts of Insurance Coverage**. Requirements for RRC's and Contractor's Protective Policy (liability) are deleted in entirety. Contractor shall not be required to provide this policy.
 - iii. All other provisions of the RFP remain in full force and effect.
- c. Exhibit B, Contractor's Proposal.

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.01. (b) through (c) are attached and hereby incorporated by reference and become part of the contract as if fully set forth.

1.03. ORDER OF PRECEDENCE. For purposes of interpretation of the Contract and in the event of conflict within the Contract Documents this Master Service Agreement Contract No. 455-18-8656 shall take precedence over the other Contract Documents. Any inconsistency among the Contract Documents shall be resolved applying the order of priority as listed below:

- a. The fully executed Master Service Agreement Contract No. 455-18-8656, including expressly identified, negotiated terms and conditions; then
- b. Exhibit A, RRC's Request for Proposal 455-18-8656 ("RFP") including all associated attachments, appendices, and addenda, as amended through Article 1.01., subparagraph b., herein; and, then
- c. Exhibit B, Contractor's Proposal.

1.04. CONTRACT MONITOR.

- a. RRC shall designate a "Contract Monitor" for this Contract who will serve as the point of contact between RRC and the Contractor. The instructions of the RRC Contract Monitor (or "designated representative") are to be strictly and promptly followed by Contractor at all times. RRC's Contract Monitor will decide all questions that may arise as to the quality and acceptability of work performed and as to the manner of performance and rate of progress of the work. RRC's Contract Monitor will determine the amount of work performed which are to be paid under the Contract. Failure of the RRC Contract Monitor during the progress of the Contract to discover or reject unacceptable work or work not performed in accordance with the Contract or to exercise any remedies shall not be deemed an acceptance or a waiver of RRC's right to full performance of the Contract. RRC's Contract Monitor does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.
- b. Contractor agrees to conduct all its services under this Contract by and through appropriate communications with the RRC Contract Monitor. No services shall be undertaken by Contractor except with the prior written direction of the RRC Contract Monitor. Contractor understands and agrees that services performed without the prior written direction of the RRC Contract Monitor is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk and own expense.

II. TERM

2.01. CONTRACT AWARD.

- a. This Contract shall be effective as of the date executed by the Parties and shall continue through August 31, 2018 unless extended by the Parties by amendment to this Contract or terminated earlier, as provided in Section 2.02 set forth below. RRC reserves the right to renew the contract for two (2) additional two (2) year terms.
- b. Notwithstanding the termination or expiration of this contract, the provisions (if applicable) regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, tool development, limitation of distribution and warranties, will survive the termination or expiration dates of this Contract.

2.02. TERMINATION.

a. **Termination for Cause.** RRC may terminate this Contract immediately for cause by providing written notice to Contractor of such termination if Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to RRC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or RRC resulting from Contractor's non-performance. Notwithstanding the foregoing, Contractor shall not be liable for damages that Contractor could not reasonably foresee on entry into this Contract. In the event of termination for cause, Contractor will not be eligible for consideration in the re-solicitation, if any, and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.

b. **Termination for Convenience.** RRC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by RRC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 4.2.22.

c. **Implementation of Termination.** Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by RRC's Contract Monitor or his/her designated representative to preserve the work in progress. In the event of termination by RRC, RRC shall pay Contractor for all work satisfactorily performed up to the effective date of termination.

2.03. NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, RRC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

III. CONSIDERATION

3.01. CONTRACT LIMIT AND FEES AND EXPENSES. The total amount of fees to be paid under this Contract during the initial term must not exceed \$95,000.00.

3.02. PAYMENTS TO CONTRACTOR.

a. Payments to Contractor, if any, will be made at the completion of a project under a Chain-of-Custody (COC) and within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Contractor will be paid for completion of work accepted and approved by RRC's Contract Monitor or his/her designated representative.

b. Contractor shall invoice RRC for work performed. Contractor shall submit invoices as specified in the following Exhibit A, RRC's Request for Proposal No. 455-18-8656, Section 4.2.21. Invoices shall be submitted to and all payment inquiries directed to:

San Antonio

Railroad Commission of Texas
Attn: William B. Miertschin/Neal Rosales
Site Remediation Section
112 E. Pecan Street, Suite 705
San Antonio, TX 78205

Houston

Railroad Commission of Texas
Attn: Randall Johnson/Dean Southward
Site Remediation Section
1706 Seamist Drive, Ste 501
Houston, TX 77008-3135

Corpus Christi

Railroad Commission of Texas
Attn: Casey Mibb/Larry Schnexnayder
Site Remediation Section
10320 IH 37
Corpus Christi, Texas 78410

Kilgore

Railroad Commission of Texas
Attn: Jeff Lauman
Site Remediation Section
2005 North State Highway 42
Kilgore, Texas 75662

Abilene

Railroad Commission of Texas
Attn: Crystal Denson/David Hudson
Site Remediation Section
3444 N. First Street, Ste 66
Abilene, TX 79603

San Angelo

Railroad Commission of Texas
Attn: Kevin Turner
Site Remediation Section
622 S. Oakes St. Ste. J
San Angelo, TX 76903

Midland

Railroad Commission of Texas
Attn: Carl Vessels/Bo Viscaino
10 Desta Dr. Suite 500 E
Site Remediation Section
Midland, Texas 79705

Wichita Falls

Railroad Commission of Texas
Attn: Ray Horton/Jeffery Jacobs
Site Remediation Section
901 Indiana Ave., Ste 600
Wichita Falls, TX 76301-6798

Pampa

Railroad Commission of Texas
Attn: Johnny Lomas
Site Remediation Section
201 W. Foster
Pampa, TX 79065

IV. STATE FUNDING.

4.01. STATE FUNDING. It is understood that all obligations of RRC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

V. CONTRACTOR PERSONNEL.

5.01. REQUIRED QUALIFICATIONS. At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the required qualified personnel to properly fulfill all the terms and conditions of this Contract.

VI. NOTICES.

6.01. NOTICES.

a. Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Contractor at the address set forth below:

For RRC:

Railroad Commission of Texas
Administration Division – Contract Management
P.O. Box 12967
Austin, Texas 78711-2967
Attention: Bill Dodson
Phone: 512-463-5881
Fax: 512-936-6402
Email: Bill.Dodson@rrc.texas.gov

For Contractor:

TestAmerica Laboratories, Inc
1733 N. Padre Island Drive
Corpus Christi, TX 78408
Attention: Chip Meador
Phone:
Fax:
Email:

b. Notice given in any other manner shall be deemed effective only if, and when, received by the Party. Either Party may change its address for notice by written notice to the other Party as provided herein.

VI. MISCELLANEOUS PROVISIONS.

7.01. GOVERNING LAW AND VENUE. This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed per, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**

7.02. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

7.03. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Contract on behalf of each Party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

7.04. SOVEREIGN IMMUNITY. The Parties agree and acknowledge that nothing contained in Contractor's proposal response or this contract will in any manner be construed as a waiver of sovereign immunity or official immunity by RRC, its employees, or the State of Texas. RRC and the State of Texas retain all legal defenses and immunities available to each. RRC does not waive any privileges, rights, defenses, remedies, or immunities, available to RRC as an agency of the State of Texas or otherwise available to RRC.

7.05. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL. Pursuant to Texas Government Code §§2270.001-2270.002, relating to prohibition on contracts with companies boycotting Israel, Contractor certifies that Contractor:

- a. does not boycott Israel; and
- b. will not boycott Israel during the term of the Contract.

7.06. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and RRC may terminate or void this Contract for cause and pursue other remedies available to RRC under this Contract and applicable law.

7.07. ENTIRE CONTRACT & MODIFICATION. Master Service Agreement Contract No. 455-18-8656 and all Contract Documents referenced in Section 1.01. herein constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

EXECUTION SIGNATURES. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective Parties.

RAILROAD COMMISSION OF TEXAS

TESTAMERICA LABORATORIES, INC.

By:

Wei Wang,
Interim Executive Director

By:

Chip Meador
Title: Laboratory Director

Date of Execution:

4-12-18

Date of Execution:

4/11/2018

Div. Director:

CM Director:

OGC: