

Addendum No. 1

1. Supply and Service Agreement Article 1, The Contract

Add the following items, which shall also be deemed part of the Contract:

13. Scope of Work

14. Quality Assurance Plan

2. Supply and Service Agreement – Article 2, Definitions

Add the following to the definition of “Project Manager” at the end of paragraph 17:

The “World Trade Center Dust Cleanup Field Personnel,” so designated by the United States Environmental Protection Agency (“EPA”) will provide technical advice and assistance and have the authority of Project Manager with respect to work to be performed hereunder in accordance with the attached Scope of Work and Quality Assurance Plan and shall have all oversight authority delegated to Project Manager under this Contract.

3. Supply and Service Agreement – Article 6, Bonds, Insurance, Liquidated Damages, Maintenance and Guarantee

Add a new Article 6.6 – Fidelity Bond as follows:

The Contractor must deliver to the Department and maintain during the term of the Contract, a Blanket Fidelity Bond in a form acceptable to the Commissioner, providing coverage for theft, disappearance and destruction of money and securities as well as property other than money

and securities, in an amount of not less than two million dollars (\$2,000,000). Such Bond shall provide coverage for the dishonest acts of the Contractors employees, whether identified or not, while acting alone or in collusion with others, which shall name the New York City Department of Environmental Protection as loss payee.

4. Supply and Service Agreement – Article 7, Liability of Contractor

(a) Article 7.1 – General Liability

Replace paragraph A with the following:

1. The Contractor shall be solely responsible for all physical injuries, or death to, its agents, servants, or employees or to any other person, and for all damage to any property sustained during its operations and work under this Agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and the Contractor shall hold harmless and indemnify the City and the United States of America from any liability upon any and all claims for damages including those on account of such injuries or death to any such person, or damages to property on account of neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants or subcontractors. The Contractor shall be solely responsible for the safety and protection of all its employees during the Contract.

In addition, the Contractor shall also defend the City and the United States of America against any and all claims, actions or other liability including those for property damage, personal injury or death arising out of or in conjunction with the Contractor's operations and work under this agreement.

(b) Article 7.1 – General Liability

Replace paragraph B with the following:

2. In the event that any claim is made or any action is brought against the City and/or the United States of America arising out of the negligence or careless acts of an employee of the Contractor, either within or without the scope of his employment, or arising out of Contractor's negligent performance of this Agreement, or arising out of any act included in paragraph A above, then the City shall have the right to withhold further payments to the Contractor for the purpose of setoff in sufficient sums to cover the said claim or action. The rights and remedies provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or this Agreement.

5. Supply and Service Agreement – Article 12.9, Publicity

Replace Paragraph A. with the following:

The prior written approval of the Department and the United States Environmental Protection Agency ("EPA") is required before the

Contractor or any of its employees, servants, agents, or subcontractors may, at any time, either during or after completion or termination of this Agreement make any statement to the press or issue any material for publication through any media of communication relating to the work performed or information and data collected under this Agreement, including, but not limited to, stating the names and addresses of those for whom cleaning and/or monitoring services are performed.

6. Supply and Service Agreement – Article 14.3, Claims and Actions Thereon

Add the following Subsection E.:

The parties to this agreement agree and acknowledge that although employees of the United States Environmental Protection Agency (“EPA”) will provide technical advice and assistance and have the authority of Project Manager under this Contract with respect to work to be performed as set forth in the attached Scope of Work and Quality Assurance Plan, the United States of America (including any of its agencies, employees and/or agents) is not a party to this Contract and there is no privity of contract between the Contractor and the United States of America, including EPA. In addition, there is no relationship of agency between the City and the United States of America created by this Contract. Nothing in the Contract or in its manner of performance or operation shall be construed as creating any implied-in-fact contract or any form of

contractual relationship between the Contractor and the United States of America, including EPA.

7. Supply and Service Agreement – Article 14.4, No Claim Against Officers, Agents or Employees

Replace the complete Article with the following:

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City or the United States of America, including EPA, for, or on account of, anything done or omitted to be done in connection with this Contract.

8. Supply and Service Agreement

Add a new Article 25 – Confidentiality and Non-disclosure to supplement Article 12.3, Confidentiality, as follows:

A. The Contractor shall:

- (1) Comply with the confidentiality requirements set forth in the Contract.
- (2) Protect the confidentiality of EPA's system of records related to this Contract.

B. In the event of any violations of the confidentiality requirements of this Contract by the Contractor, remedies may be sought under the Contract.

(1) "Record", as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by EPA, including, but not limited to, name, address, environmental data, residential

data or other personal data, and that record contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(2) "System of records", as used in this clause, means a group of any records under the control of EPA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

C. (1) The Contractor recognizes that in performing this Contract the Contractor and its employees, and its subcontractors, may have access to information and data, either provided by the City, the State of New York, the United States Environmental Protection Agency ("EPA") or other contractors, or first generated during contract performance, of a sensitive nature (such as the names and addresses of residents whose residences are subject to cleaning and monitoring) which should not be released to the public without EPA approval. Therefore, the Contractor agrees to obtain written, signed confidentiality agreements from all of its employees, and subcontractors, working under the Contract.

(2) Such confidentiality agreements shall contain provisions which stipulate that each employee, and subcontractor, shall not disclose, either in whole or in part, to any entity other than EPA, the Department of Justice or the City, any information or data in EPA's system of records or generated by the Contractor, or any subcontractor, under this Contract, without first

obtaining the written permission of EPA. If a contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must immediately notify EPA, so that EPA, in consultation with the Department, can authorize such disclosure or take action to prevent such disclosure. Such agreements shall be effective for the life of the Contract and for a period of five (5) years after completion of the Contract.

- (3) The Department may terminate this Contract for convenience, in whole or in part, if it deems such termination necessary to prevent or remedy the unauthorized disclosure of information or data to outside entities. If disclosure of any information or data by the Contractor, its employees or subcontractors occurs without the written permission of EPA, in consultation with the Department, the Department may terminate the Contract, for default or convenience, or pursue other remedies as may be permitted by law or the Contract.
- (4) The Contractor further agrees to insert in any subcontract or consultant agreement related in any way to the Contract, confidentiality provisions which shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the Department.