

**TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH**

**DATE: April 22, 2013**

**RE: *Approval of Intrastate Interlocal Contract with Nevada State Division of Environmental Protection for Local Underground Storage Tank Program (Four Year Renewal)***


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**PETITION #09-13**

**That the Southern Nevada District Board of Health approve the attached FY 2014-2017 Intrastate Interlocal Contract with Nevada Division of Environmental Protection (NDEP) for provision of the Underground Storage Tank (UST) inspection and public outreach program.**

**PETITIONERS:**

**Dennis Campbell, Manager, Solid Waste and Compliance** 

**Amy Irani, Acting Director of Environmental Health** 

**Elaine Glaser, Director of Administration** 

**John Middaugh, M.D., Interim Chief Health Officer** 

**DISCUSSION:**

The UST program addresses the compliance issues associated with all underground storage tanks in Clark County. NDEP is the state agency identified by the Environmental Protection Agency (EPA) to carry out federal regulations regarding underground storage tank facilities. NDEP is seeking continued District participation in the underground storage tank compliance inspection program. District responsibility consists of inspecting all existing systems (approximately 800 facilities) for compliance, including leak detection testing, spill and overflow monitoring, federal reporting requirements, and corrosion analysis for the entire system. The District issues annual operating permits and permits for installation of new systems, reviews plans, and provides oversight of the installation to ensure that all required features are included in the construction.

**DISCUSSION: (cont.)**

The District continues to issue annual operating permits and provide oversight of the UST removal process and the initial site characterization, but sites requiring remediation are referred to NDEP staff. Projects and systems requiring enforcement actions are also referred to NDEP. Staff time is dedicated toward leak detection, record reviews, compliance inspections of existing systems, issuing annual operating permits, review plans and providing oversight of new system installations. Staff time is also dedicated toward issuing permits for repairs, upgrades and tank removals and providing oversight of tank closures and removals. Public outreach programs designed to help locate previously unreported tanks and to remind owners/operators of their responsibilities continues as an important feature of the District's contractual obligations. The District also provides support to NDEP in ensuring that all systems are compliant with Financial Assurance requirements.

**FUNDING:**

NDEP will provide \$680,000 (\$170,000 per fiscal year) of EPA grant funds to District for the period July 1, 2013 through June 30, 2017. No allowance has been made for cost increases resulting from inflation.

# INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

## A Contract between the State of Nevada Acting By and Through Its

Department of Conservation and Natural Resources  
Division of Environmental Protection, Bureau of Corrective Actions  
901 S. Stewart Street, Carson City, NV 89701-5249  
Phone: (775) 687-9368 Fax: (775) 687-8335

and

Southern Nevada Health District  
*hereinafter the "Public Agency"*  
P.O. Box 3902  
330 S. Valley View Blvd.  
Las Vegas, NV 89127  
702-759-1244 Contact: Marlene Koliccius, M.A.

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services of Southern Nevada Health District hereinafter set forth are both necessary to Nevada Division of Environmental Protection, Bureau of Corrective Actions and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. **CONTRACT TERM.** This Contract shall be effective from July 1, 2013 upon approval to June 30, 2017, unless sooner terminated by either party as set forth in this Contract.
4. **TERMINATION.** This Contract may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 30 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason State and/or federal funding ability to satisfy this Contract is withdrawn, limited, or impaired.
5. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.
6. **INCORPORATED DOCUMENTS.** The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF WORK (consisting of 7 pages)

ATTACHMENT B: ADDITIONAL AGENCY TERMS & CONDITIONS (consisting of 3 pages)

7. CONSIDERATION. Southern Nevada Health District agrees to provide the services set forth in paragraph (6) at a cost of \$ 170,000 per year (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: Quarterly, not exceeding \$ 680,000. Any intervening end to an annual or biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

9. INSPECTION & AUDIT.

a. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other party, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.

b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained by each party for a minimum of three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. BREACH; REMEDIES. Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs.

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. INDEMNIFICATION. Neither party waives any right or defense to indemnification that may exist in law or equity.

14. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this

Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

16. 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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law or this Contract, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

21. 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 and that the parties are authorized by law to perform the services set forth in paragraph (6).

22. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

23. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such 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 an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the State of Nevada Office of the Attorney General.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

**PUBLIC AGENCY – Southern Nevada Health District:**

\_\_\_\_\_  
By: Signature Title Date

**DIVISION:**

\_\_\_\_\_  
By: Colleen Cripps, Ph.D. Administrator-NDEP Title Date

**BUREAU:**

\_\_\_\_\_  
By: Sandi Gotta Contract Manager Title Date

**DIVISION FISCAL APPROVAL:**

\_\_\_\_\_  
By: Lisa Fleming Budget Analyst II Title Date

Approved as to form by:

\_\_\_\_\_  
Deputy Attorney General for Attorney General On \_\_\_\_\_ (Date)

**APPROVED BY BOARD OF EXAMINERS**

\_\_\_\_\_  
Signature - Board of Examiners On \_\_\_\_\_ (Date)

**ATTACHMENT A**  
**UNDERGROUND STORAGE TANK**  
**AND**  
**LEAKING UNDERGROUND STORAGE TANK PROGRAM**  
**OBJECTIVES & WORKPLAN**

State Fiscal Year 2014, 2015, 2016, 2017  
JULY 1, 2013 - JUNE 30, 2017  
Contract #DEP

**I. PROGRAM IMPLEMENTATION**

As part of the State Program, **Southern Nevada Health District (SNHD)** will continue activities relative to the time frames and definitions of the Underground Storage Tank (UST) Program requirements as delineated in the Federal Register 40 CFR Part 280, §§ 280.10 through 280.112; NRS 459.800 to 459.856; and NAC 459.9921 to 459.999, inclusive. SNHD will work within the Nevada Division of Environmental Protection (NDEP) guidance and oversight. Any variation from the regulations, guidance, or oversight will require written concurrence from NDEP. It is recognized that a guidance or directive from the U.S. EPA that may modify the reporting requirements or definitions reported herein shall be incorporated into this Work plan and made a part.

The objectives of the Nevada UST program are:

- a) Ensure consistent application and enforcement of State and Federal UST Regulations.
- b) Improve compliance with the regulations through increased in-field interaction and education of, owners, operators and managers of UST facilities.
- c) Conduct consistent inspections at each facility through a prioritization system that ensures each facility is inspected at least every 24 months.
- d) Provide accurate and timely information to the NDEP to enable timely updates to the State UST Access database (UST FITS).
- e) Compile accurate and consistent compliance data as required by the US EPA.

**II. UST NOTIFICATION**

1. Inform the UST owner/operators for new, upgraded, or closed UST systems of the requirement to notify NDEP using EPA Form 7530-1. SNHD to ensure the 7530-1 forms are accurate and complete prior to forwarding originals to NDEP. Notification forms should be forwarded to the NDEP UST Program within 30 days. A contact will be provided (and updated as needed) to allow for electronic delivery.

Report quarterly:

- (1) The number of new or amended 7530-1 forms processed and forwarded to NDEP.

2. Receive in writing an operator's notice of intent to permanently close or make a change-in-service to their underground storage tank system, as required by 40 CFR, § 280.71. Inform operators of all applicable requirements under 40 CFR, § 280 and NAC 459.970 through 459.979 (certification).

Report quarterly:

- (1) The number of site inspections conducted for USTs being permanently closed.

### III. UST COMPLIANCE/ENFORCEMENT

1. Conduct on-site facility inspections that are consistent with the State of Nevada UST Inspection Protocol. NDEP will provide the UST Inspection Protocol and may engage in one or more joint inspections per calendar quarter to assist with achieving consistency of inspections. A reference to the Significant Operational Compliance (SOC) framework will be provided by the NDEP.

Report quarterly

- (1)(a) Number of initial facility compliance inspections completed.
- (b) Release Prevention SOC: Number of facilities in Significant Operational Compliance (SOC) with the 1998 regulations (corrosion, spill, and overflow) at the time of the initial inspection conducted during the reporting period.
- (c) Release Detection SOC: Number of facilities in Significant Operational Compliance (SOC) with the leak detection regulations at the time of the initial inspection conducted during the reporting period.

SNHD will conduct necessary activities to ensure UST owner/operator compliance with financial responsibility requirements. (NDEP will provide SNHD with a list of UST owner/operators that have not enrolled in the State Petroleum Fund on an annual basis).

2. Provide for a 'Step Wise' progressive compliance/enforcement program consistent with NDEP's Compliance Assistance and Enforcement Guidance document.

Provide documentation to the owner/operator acknowledging correction of non-compliance deficiencies. Submit a copy of documentation (i.e., correspondence) to NDEP.

Report quarterly:

- (2)(a) The number of facilities sent informal enforcement letters regarding UST non-compliance issues.
  - (b) The number of facilities that have resolved all compliance issues the reporting period (regardless of the period in which the issues were initiated).
3. Conduct re-inspections as necessary to ensure compliance at those facilities for which owner/operators were issued informal enforcement letters.

Report quarterly:

- (1) The number of on-site UST facility re-inspections.
4. Refer any UST non-compliance cases that have not been resolved by telephone calls, follow-up letters, or re-inspections to NDEP for formal enforcement action. Provide supporting documentation, sufficient for issuance of an enforcement order. All cases referred to NDEP should include the following:
    - a) A formal referral letter addressed to NDEP, referring the case. The letter should cite the specific UST regulation that is alleged to have been violated. The owner/operator is to be courtesy copied;
    - b) An accurately compiled written summary of all submittals, responses, and actions relating to the case; and
    - c) A copy of all correspondence and submittals related to the non-compliance issue.

Report quarterly:

- (1) The number of UST cases referred to NDEP for formal enforcement action.
5. Refer any suspected non-compliance with NAC 459.970 through 459.9729 (Certification) to the NDEP, Bureau of Corrective Actions, Certification Branch.



#### IV. LEAKING UST's (LUST)

1. Track the number of UST system closures (i.e., permanently out of service UST systems) with reported sampling results below the State action level of 100 mg/kg Total Petroleum Hydrocarbons (TPH), including closures with no detected contamination.

Report quarterly:

- (1) The number of UST closures (i.e., permanently out of service UST systems) with sampling results below the State action level of 100 mg/kg TPH, including closures with no detected contamination.

2. Track the number of releases from UST systems undergoing closure with a Verified Release. NDEP will provide guidance for defining and determining a Verified Release.

Report quarterly:

- (1) The number of UST closures (i.e., permanently out of service UST systems) with a Verified Release (per NDEP guidance).

3. Track the number of UST systems not undergoing closure that have a Verified Release (per NDEP guidance).

Report quarterly:

- (1) The number of UST systems not undergoing closure that have a Verified Release (per NDEP guidance).

4. Track the number of suspected releases from UST systems not undergoing closure. In accordance with NDEP practice:

- A statistical Inventory Reconciliation (SIR) "failure" will be considered a suspected release;
- An SIR "inconclusive" will not be considered a suspected UST release unless it is the second consecutive "inconclusive" result for the same UST system.

Report quarterly:

- (1) The number of suspected releases from UST systems not undergoing closure.

5. Provide notification to owners/operators of regulatory requirements to "notify" the NDEP Spill Hotline regarding detection and verification of a release from a UST system. The notification also should indicate that the Leaking UST case is being referred to NDEP for follow-up.

Inform owner/operators of the applicable requirements under 40 CFR, §280, NAC 445A.345 through 445A.348, NAC 445A.226 through 445A.22755, and NAC 459.970 through 459.9729 (Certification) in these letters. Copy NDEP on all notification letters.

Report quarterly:

- (1) The number of Verified Release notification letters mailed to owner /operators. (Include State Facility ID numbers on all correspondences).

6. Provide 'initial abatement' oversight at LUST sites in accordance with NDEP guidance. Abatement (excavation and removal for off-site disposal) of contaminated soil suspected of containing petroleum above the State action level of 100 mg/kg TPH (beyond the removal of engineered fill [e.g. pea gravel]) should be conducted under the oversight and judgment of the SNHD UST Inspector. Additional abatement can be authorized after contacting the NDEP UST/LUST Supervisor or designee.

Report quarterly:

- (1) The number of LUST cases where initial abatement oversight was provided by SNHD.

7. Refer LUST cases to NDEP where contaminated soil resulting from the release is not removed through abatement and for cases where groundwater is known or suspected to be contaminated from the Verified Release. All cases referred to NDEP should be managed as follows:

- a) Case file is to be sent to NDEP Carson City office (unless otherwise informed) for facilities where USTs have been permanently closed and no active USTs remain.

Report quarterly:

- (1) The number of LUST cases formally referred to NDEP.

V. PROGRAM TRACKING

UST/LUST QUARTERLY TRACKING  
 \_\_\_\_\_ QUARTER FY2014

Reporting Period \_\_\_\_\_ through \_\_\_\_\_.

\* Quarterly report due within five (5) days following the end of each quarter.

OUTPUT	TASK	Qtr	Year (Fiscal Year)
<b>UST:</b>			
Number of new or amended 7530-1 forms processed and forwarded to NDEP.	II.1(1)		
Number of site inspections conducted for USTs being permanently closed.	II.2(2)		
Number of initial facility compliance inspections completed.	III.1.a		
<u>Release Prevention SOC</u> : Number of facilities in Significant Operational Compliance (SOC) with the 1998 regulations (corrosion, spill, and overfill) at the time of the initial inspection conducted during the reporting period.	III.1.b		
<u>Release Detection SOC</u> : Number of facilities in Significant Operational Compliance (SOC) with the leak detection regulations at the time of the initial inspection conducted during the reporting period.	III.1.c		
Number of facilities sent informal enforcement letters regarding UST non-compliance issues.	III.2.a		
Number of facilities that resolved all compliance issues in the reporting period (regardless of the period in which the issues were initiated).	III.2.b		
Number of on-site UST facility re-inspections.	III.3		
Number of UST cases referred to NDEP for formal enforcement action.	III.4		

OUTPUT	TASK	___Qtr	Year (Fiscal Year)
<b>LUST:</b>			
Number of UST closures (i.e., permanently out of service UST systems) with sampling results below the State action level of 100 mg/kg TPH, including closures with no detected contamination.	IV.1		
Number of UST system closures (i.e., permanently out of service UST systems) with a Verified Release (per NDEP guidance).	IV.2		
Number of UST systems not undergoing closure that have a Verified Releases (per NDEP guidance).	IV.3		
Number of suspected releases from UST systems not undergoing closure.	IV.4		
Number of Verified Release notification letters mailed to owner /operators.	IV.5		
Number of LUST cases where initial abatement oversight was provided by SNHD.	IV.6		
Number of LUST cases formally referred to NDEP.	IV.7		

**VI. BUDGET**

<b>SALARIES</b>	<b>RATE</b>	<b>NDEP</b>	<b>SNHD FUNDS</b>	<b>TOTAL</b>
EH Manager (50%)	\$51.62	\$99,158	\$192,482	\$291,640
EH Supervisor (50%)	\$37.04			
Sr. Environmental Health Specialist (50%)	\$33.01			
Sr. Admin. Assist (75%)	\$24.62			
EH Specialist II (100%)	\$28.70			
EH Specialist II (100%)	\$27.95			
<b>Sub-Total Salary:</b>		<b>\$99,158</b>	<b>\$192,482</b>	<b>\$291,640</b>
<b>FRINGE BENEFITS</b>				
Retirement	Not to exceed 35%	\$34,705	\$60,632	\$95,337
Group Insurance				
SIIS/Medicare				
Liability/Unemployment Ins.				
<b>Sub-Total Fringe Benefits:</b>		<b>\$34,705</b>	<b>\$60,632</b>	<b>\$95,337</b>
<b>TRAVEL</b>				
Personal Vehicle Mileage	At State-approved rates		\$4,000	\$4,000
Per Diem				
<b>Sub-Total Travel:</b>			<b>\$4,000</b>	<b>\$4,000</b>
<b>OPERATING EXPENSES</b>				
Office Supplies	At actual cost	\$36,137	\$23,653	\$59,790
Instructional Supplies				
Postage				
Printing				
Telephone				
Subscriptions				
Advertising				
<b>Sub-Total Operating:</b>		<b>\$36,137</b>	<b>\$23,653</b>	<b>\$59,790</b>
<b>INDIRECT COSTS</b>				
<b>Grand Total:</b>		<b>\$170,000</b>	<b>\$280,767</b>	<b>\$450,767</b>

**ATTACHMENT B:  
ADDITIONAL AGENCY TERMS & CONDITIONS  
TO CONTRACT FOR SERVICES OF PUBLIC AGENCY  
CONTRACT CONTROL # DEP 14-004**

1. For contracts utilizing federal funds, the Nevada Division of Environmental Protection shall pay no more compensation than the federal Executive Service Level 4 (U.S. Code) daily rate (exclusive of fringe benefits) for individual consultants retained by the Public Agency or by the Public Agency's contractors or subcontractors. This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. The current Level 4 rate is \$74.50 per hour.

2. ***NDEP shall only reimburse the Public Agency for actual cash disbursed.*** Original invoices (facsimiles are not acceptable) must be received by NDEP no later than forty (40) calendar days after the end of a month or quarter except at the end of the fiscal year of the State of Nevada (June 30th), at the expiration date of the grant, or the effective date of the revocation of the contract, at which times original invoices must be received by NDEP no later than thirty-five (35) calendar days after this date. Failure of the Public Agency to submit billings according to the prescribed timeframes authorizes NDEP, in its sole discretion, to collect or withhold a penalty of ten percent (10%) of the amount being requested for each week or portion of a week that the billing is late. The Public Agency shall provide with each invoice a detailed fiscal summary that includes the approved contract budget, expenditures for the current period, cumulative expenditures to date, and balance remaining for each budget category. If match is required pursuant to paragraph 3 below, a similar fiscal summary of match expenditures must accompany each invoice. The Public Agency shall obtain prior approval to transfer funds between budget categories if the funds to be transferred are greater than ten percent (10%) cumulative of the total Contract amount.

3. The Public Agency shall, as part of its approved scope of work and budget under this Contract, provide third party match funds of not less than: \$ N/A . If match funds are required, the Public Agency shall comply with additional record-keeping requirements as specified in 40 CFR 31.24 and Attachment N/A (Third Party Match Record-Keeping Requirements) which is attached hereto and by this reference is incorporated herein and made part of this Contract.

4. Unless otherwise provided in Attachment A (Scope of Work), the Public Agency shall submit quarterly reports or other deliverables within ten (10) calendar days after the end of each quarter.

5. All payments under this Contract are contingent upon the receipt by NDEP of sufficient funds, necessary to carry out the purposes of this Contract, from either the Nevada Legislature or an agency of the United States. NDEP shall determine if it has received the specific funding necessary for this Contract. If funds are not received from either source for the specific purposes of this Contract, NDEP is under no obligation to supply funding for this Contract. The receipt of sufficient funds as determined by NDEP is a condition precedent to NDEP's obligation to make payments under this Contract. Nothing in this Contract shall be construed to provide the Public Agency with a right of payment over any other entity. If any payments that are otherwise due to the Public Agency under this Contract are deferred because of the unavailability of sufficient funds, such payments will promptly be made to the Public Agency if sufficient funds later become available.

6. Notwithstanding the terms of paragraph 5, at the sole discretion of NDEP, payments will not be made by NDEP unless all required reports or deliverables have been submitted to and approved by NDEP within the schedule stated in Attachment A.

7. Any funds obligated by NDEP under this Contract that are not expended by the Public Agency shall automatically revert back to NDEP upon the completion, termination or cancellation of this Contract. NDEP shall not have any obligation to re-award or to provide, in any manner, such unexpended funds to the Public Agency. The Public Agency shall have no claim of any sort to such unexpended funds.

8. For contracts utilizing federal funds, the Public Agency shall ensure, to the fullest extent possible, that at least the "fair share" percentages as stated below for prime contracts for construction, services, supplies or equipment are made available to organizations owned or controlled by socially and economically disadvantaged individuals (Minority Business Enterprise (MBE) or Small Business Enterprise (SBE)), women (Women Business Enterprise (WBE)) and historically black colleges and universities.

	MBE/SBE	WBE
Construction	12%	10%
Services	07%	25%
Supplies	13%	28%
Equipment	11%	23%

The Public Agency agrees and is required to utilize the following seven affirmative steps:

- a. Include in its bid documents applicable "fair share" percentages as stated above and require all of its prime contractors to include in their bid documents for subcontracts the "fair share" percentages;
- b. Include qualified Small Business Enterprises (SBEs) Minority Business Enterprises (MBEs), and Women Business Enterprises (WBEs) on solicitation lists;
- c. Assure that SBEs, MBEs, and WBEs are solicited whenever they are potential sources;
- d. Divide total requirements, when economically feasible, into small tasks or quantities to e. permit maximum participation of SBEs, MBEs, and WBEs;
- e. Establish delivery schedules, where the requirements of the work permit, which will encourage participation by SBEs, MBEs, and WBEs;
- f. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency, U.S. Department of commerce as appropriate; and
- g. If a subcontractor awards contracts/procurements, require the subcontractor to take the affirmative steps in subparagraphs a. through e. of this condition.

9. The Public Agency shall complete and submit to NDEP a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within fifteen (15) calendar days after the end of each federal fiscal year (September 30th) for each year this Contract is in effect and within fifteen (15) calendar days after the termination date of this Contract.

10. The books, records, documents and accounting procedures and practices of the Public Agency or any subcontractor relevant to this Contract shall be subject to inspection, examination and audit by the State of Nevada, the Division of Environmental Protection, the Attorney General of Nevada, the Nevada State Legislative Auditor, the federal or other funding agency, the Comptroller General of the United States or any authorized representative of those entities.

11. All books, reports, studies, photographs, negatives, annual reports or other documents, data, materials or drawings prepared by or supplied to the Public Agency in the performance of its obligations under this Contract shall be the joint property of both parties. Such items must be retained by the Public Agency for a minimum of three years from the date of final payment by NDEP to the Public Agency, and all other pending matters are closed. If requested by NDEP at any time within the retention period, any such materials shall be remitted and delivered by the Public Agency, at the Public Agency's expense, to NDEP. NDEP does not warrant or assume any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, report or product of any kind that the Public Agency may disclose or use for purposes other than the performance of the Public Agency's obligations under this Contract. For any work outside the obligations of this Contract, the Public Agency must include a disclaimer that the information, report or products are the views and opinions of the Public Agency and do not necessarily state or reflect those of NDEP nor bind NDEP.

12. Unless otherwise provided in Attachment A, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with funds provided under this Contract, the Public Agency shall clearly state that funding for the project or program was provided by the Nevada Division of Environmental Protection and, if applicable, the U.S. Environmental Protection Agency. The Public Agency will insure that NDEP is given credit in all official publications relative to this specific project and that the content of such publications will be coordinated with NDEP prior to being published.

13. Unless otherwise provided in Attachment A, all property purchased with funds provided pursuant to this Contract is the property of NDEP and shall, if NDEP elects within four (4) years after the completion, termination or cancellation of this Contract or after the conclusion of the use of the property for the purposes of this Contract during its term, be returned to NDEP at the Public Agency's expense.

Such property includes but is not limited to vehicles, computers, software, modems, calculators, radios, and analytical and safety equipment. The Public Agency shall use all purchased property in accordance with local, state and federal law, and shall use the property only for Contract purposes unless otherwise agreed to in writing by NDEP.

For any unauthorized use of such property by the Public Agency, NDEP may elect to terminate the Contract and to have the property immediately returned to NDEP by the Public Agency at the Public Agency's expense. To the extent authorized by law, the Public Agency shall indemnify and save and hold the State of Nevada and NDEP harmless from any and all claims, causes of action or liability arising from any use or custody of the property by the Public Agency or the Public Agency's agents or employees or any subcontractor or their agents or employees.

14. The Public Agency shall use recycled paper for all reports that are prepared as part of this Contract and delivered to NDEP. This requirement does not apply to standard forms.

15. The Public Agency, to the extent provided by Nevada law, shall indemnify and save and hold the State of Nevada, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Contract by the Public Agency or the Public Agency's agents or employees or any subcontractor or their agents or employees. NDEP, to the extent provided by Nevada law, shall indemnify and save and hold the Public Agency, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Contract by NDEP or NDEP's agents or employees.

16. The Public Agency and its subcontractors shall obtain any necessary permission needed, before entering private or public property, to conduct activities related to the work plan (Attachment A). The property owner will be informed of the program, the type of data to be gathered, and the reason for the requested access to the property.

17. This Contract shall be construed and interpreted according to the laws of the State of Nevada and conditions established in OMB Circular A-102. Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Nevada. Any action brought to enforce this contract shall be brought in the First Judicial District Court of the State of Nevada. The Public Agency and any of its subcontractors shall comply with all applicable local, state and federal laws in carrying out the obligations of this Contract, including all federal and state accounting procedures and requirements established in OMB Circular A-87 and A-133. The Public Agency and any of its subcontractors shall also comply with the following:

- a. 40 CFR Part 7 - Nondiscrimination In Programs Receiving Federal Assistance From EPA
- b. 40 CFR Part 29 - Intergovernmental Review Of EPA Programs And Activities.
- c. 40 CFR Part 31 - Uniform Administrative Requirements For Grants And Cooperative Agreements To State and Local Governments;
- d. 40 CFR Part 32 - Governmentwide Debarment And Suspension (Nonprocurement) And Governmentwide Requirements For Drug-Free Workplace (Grants);
- e. 40 CFR Part 34 - Lobbying Activities;
- f. 40 CFR Part 35, Subpart O - Cooperative Agreements And Superfund State Contracts For Superfund Response Actions (Superfund Only); and
- g. The Hotel And Motel Fire Safety Act of 1990.

18. The Public Agency shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of NDEP.