DEFINITIONS

Whenever used in this document, the following definitions shall apply unless the content indicates otherwise.

**Authorized Procurement Representative.** The term “authorized procurement representative” shall be a person with authority to enter into and administer Subcontracts and make related determinations and findings. These individuals are identified with the associated authority in the body of the Subcontract.

**Buyer’s Technical Representative (BTR).** The term “Buyer’s Technical Representative (BTR)” means the individual responsible for providing technical direction to the SUBCONTRACTOR. The BTR does not possess any explicit, apparent or implied authority to modify Subcontract terms and conditions.

**BUYER.** The term “BUYER” means Washington River Protection Solutions, LLC (WRPS).

**Government.** The term “Government” shall mean the United States of America and includes the U.S. Department of Energy (DOE) Office of River Protection (ORP), or any duly authorized representative thereof, including the BUYER’s Administrative Contracting Officer (ACO).

**Head of the Procurement Activity.** The term “Head of the Procurement Activity” means the individual who has the overall responsibility for the operations of the WRPS Procurement Office.

**Lower-Tier Subcontractors.** The term “lower-tier Subcontractors” refers to companies or individuals with whom the SUBCONTRACTOR has purchase orders, subcontracts and rental agreements for materials or equipment, and other services not performed directly by the SUBCONTRACTOR under this Subcontract.
**SUBCONTRACTOR.** The term SUBCONTRACTOR refers to the company, person or organization, including all lower-tier Subcontractors, performing Work under this Subcontract.

**Subcontract.** The term Subcontract shall mean this Subcontract or Purchase Order between the BUYER and the SUBCONTRACTOR including its terms, conditions, clauses, provisions, written direction and instructions, releases, and documents.

**Work.** The term “Work” includes all material, labor, tools, and all appliances, machinery, and transportation, necessary to perform and complete the Subcontract’s requirements, and such additional items not specifically indicated or described that can be reasonably inferred as required to complete the Subcontract.

**ARTICLE 1.0 CONTRACT TYPE**

This is a Firm Fixed Price (FFP) contract type, which provides for a price that is not subject to any adjustment on the basis of the cost experience in performing the Subcontract, unless a supportable change request is incorporated per the provisions of this Subcontract agreement. This Subcontract places full responsibility upon the SUBCONTRACTOR for all costs and resulting profit or loss.

**ARTICLE 2.0 ORDER OF PRECEDENCE**

In the event of a discrepancy among any of the Subcontract terms, conditions, clauses, provisions, including the Authorized Procurement Representative’s written direction and instructions, and other documents (collectively, the ‘Subcontract’), the following order of precedence shall govern resolution:

(i) Amendments (e.g. Modifications);
(ii) Contract Agreement (i.e. Subcontract, Purchase Orders, and Release or Task Orders);
(iii) Special Provisions;
(iv) On-Site Work Provisions;
(v) Construction Provisions;
(vi) Supplemental Provisions;
(vii) General Provisions;
(viii) Statement of Work (‘SOW’);
(ix) Technical Specifications; and
(x) Drawings.

Nothing recited above shall be construed as superseding or deleting any applicable statute, rule, ordinance, or regulation (collectively, the ‘Laws’). In the event of a conflict with Laws, the specific conflicting term of the Subcontract shall be considered null and without effect, Laws shall govern. All remaining terms unaffected by said Laws should continue in force.

**ARTICLE 3.0 TERMS OF PAYMENT**

Payment will be made upon completion of all subcontract requirements unless “progress” or “milestone” payments have been specifically authorized in the body of the Subcontract. Any such “progress” or “milestone” payment authorizations will specify the agreed upon progress goals or milestones that must be met prior to any such payments.
The following process shall be used on all invoices submitted to the BUYER. Failure to comply may result in delayed payment or returned invoice.

3.1 General Invoice Requirements

A. Invoice Submission Requirements. Original invoices and supporting documentation shall be submitted no more than once a calendar month to the BUYER’s Accounts Payable organization at the address below:

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
Accounts Payable/Mail Stop: H1-40
P.O. Box 850
Richland, WA 99352
Email electronic invoices to: WRPSAPINVOICES@rl.gov.

Submittal of an invoice constitutes the SUBCONTRACTOR’s certification that the Work has been provided, and the invoiced amounts are in accordance with the Subcontract provisions.

B. Invoice Payment Terms. The SUBCONTRACTOR shall prepare all invoices in a form satisfactory to and approved by the BUYER’s authorized procurement representative. Except to the extent expressly stated elsewhere in this Subcontract, the invoice is payable thirty (30) calendar days after receipt by the BUYER of a properly marked and submitted invoice. Discounts are expected for earlier payments and shall be specifically incorporated in the Subcontract. All unit pricing and payments made shall be in United States dollars only, in the forms of cash, check, or electronic transfer as may be agreed upon. Invoices may be submitted electronically, if in an acceptable format. All invoice requirements still apply to electronic invoices.

C. Minimum Invoice Requirements. The invoice shall comply with following requirements:

- Invoices must be submitted in a format that reconciles to the Subcontract’s Compensation (Billing) Schedule.
- Each Subcontract must be invoiced separately.
- The invoice must clearly & legibly identify the SUBCONTRACTOR’s name and invoice number, as well as Subcontract, Subcontract Release, or Purchase Order Number.
- Each invoice shall include the name and telephone number of the SUBCONTRACTOR’s representative available to respond to invoice questions.
- Remittance will be made only to the remittance address on file for the SUBCONTRACTOR. Invoices from third parties or with different remittance instructions or addresses will not be processed.
- Questions or requests for exceptions shall be addressed to the BUYER’s authorized procurement representative administering the Subcontract.
- Cash discounts will apply from the date a correct, properly supported invoice is received by the BUYER, or the date the goods are received, whichever is later.
- The SUBCONTRACTOR must indicate the quantity, unit description, and unit price for each item listed on an invoice.
Each invoice must include a separate line item for sales tax unless an exemption from sales tax is specifically cited in the body of the Subcontract or Purchase Order. Invoices that do not include a separate line item for sales tax will not be paid and will be returned to the Subcontractor/Vendor for correction.

Invoices that include a total freight charge that is equal to or greater than one hundred dollars ($100) must include a copy of the freight bill. If requested by the BUYER, the SUBCONTRACTOR must provide the weight, quantity, and shipping point.

3.2 Rejection of Invoices

Any invoice submitted, which fails to comply with the terms of this Subcontract, including the requirements of form and documentation, may be returned to the SUBCONTRACTOR. Any costs associated with the resubmission of a proper invoice shall be to the SUBCONTRACTOR’s account. Final payment shall not relieve the SUBCONTRACTOR of any obligation under this Subcontract.

3.3 Withholding Invoice Payments

The BUYER may, at its sole discretion, withhold payment due to, but not limited to, the following reasons:

- Substandard work or delays in the Work not corrected promptly.
- Evidence that a claim has been or will be filed against the SUBCONTRACTOR.
- Evidence that lower-tier Subcontractors have not been properly paid.
- Failure to provide accrual reports by the 16th of each month as specified in the Subcontract provisions.

3.4 Taxes

Unless the SUBCONTRACTOR is issued a direct pay permit by the BUYER, the SUBCONTRACTOR is required to collect the applicable Washington State sales or use tax and include this on each applicable invoice. Sales tax must be listed as a separate line item on the invoice as stated in 3.1C above. If the SUBCONTRACTOR is an out of state vendor with no nexus in the State of Washington, taxes will be paid by BUYER. SUBCONTRACTOR shall notify the Authorized Procurement Representative if they don’t have a nexus in the State of Washington. All other Federal, State, county, municipal or other taxes not excluded by the Washington State Department of Revenue Direct Pay Permit must be included in the Subcontract amount. If as a result of this Subcontract, the SUBCONTRACTOR becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall take such tax credit and assign such tax credit to the BUYER. If the SUBCONTRACTOR applies for the Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall notify the BUYER’s authorized procurement representative. The SUBCONTRACTOR shall fully cooperate with the BUYER in any tax audits, tax assessment reviews, or tax challenges.

3.5 Right to Offset

The BUYER, without waiver or limitation of any rights or remedies of the BUYER, shall be entitled from time to time to deduct from any amounts due or owing by the BUYER to the SUBCONTRACTOR in
connection with this Subcontract (or any other Subcontract with the BUYER), any and all amounts owed by the SUBCONTRACTOR to the BUYER or the Government in connection with this Subcontract.

3.6 Interest Payment

No interest is payable to the SUBCONTRACTOR for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment, and then only in accordance with the terms of the judgment.

3.7 Accruals

This provision applies to all Subcontracts unless the Subcontract is for one-time Work which will be billed during the month the Work was performed. The SUBCONTRACTOR shall provide monthly to the BUYER’s Accounts Payable an estimate of the total billable cost from inception of the Subcontract through the current fiscal month end. The Fiscal Month Calendar can be accessed on the Hanford external web site at Fiscal Month Calendar. This information must be provided electronically between the 12th and the 16th of each month using the login information contained in the SUBCONTRACTOR’s confirmation email when the SUBCONTRACTOR completed its initial vendor registration with the BUYER.

Accruals are submitted through the Vendor Registration System at Vendor Registration. Click on the accruals tab at the top of the screen and enter the current cost to date amount for the subcontract or release in the appropriate space. If you experience any technical difficulties, please contact us at wrps_procurement@rl.gov. Alternative methods are email or mail and must be submitted by the 16th of each month to the following address.

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
ATTN: Accounts Payable / MSIN H1-40
P.O. Box 850
Richland, WA 99352
Email: awrps@rl.gov

Monthly SUBCONTRACTOR cost to date forms can be obtained at the following link -- Subcontractor Cost to Date Form (Accrual).

3.8 Final Payment

Upon completion of the Work, the SUBCONTRACTOR shall notify the BUYER’s authorized procurement representative, in writing that the Work is complete and that final payment is due. The final invoice shall be clearly marked “FINAL PAYMENT” and submitted for reimbursement after completion and acceptance of Work by the BUYER and compliance by the SUBCONTRACTOR with all terms of this Subcontract. The final invoice shall be supported by all requested certifications and releases needed to close out the Subcontract including, but not limited to, the “Subcontractor Release of Claims.” If the Work has been completed in accordance with this Subcontract, final payment will be made in accordance with the terms of this Subcontract. Final Payment shall not relieve the SUBCONTRACTOR of any obligation under this Subcontract.
ARTICLE 4.0 WARRANTY

The SUBCONTRACTOR warrants that all supplies and services provided under this Subcontract shall conform to the Statement of Work and/or specification included in this Subcontract. The SUBCONTRACTOR further warrants that all supplies provided as part of the Work shall be new, not refurbished or reconditioned; preserved, packaged, marked and prepared for shipment in a manner conforming to the requirements of applicable law and regulation and this Subcontract; and of an even kind, quality and quantity within each unit and among all units.

These warranty obligations shall survive for one (1) year after acceptance of the supplies or the completion of the Work performance hereunder unless a longer warranty period is called for in any writing including, without limitation, specifications, drawings or proposals furnished by or to the BUYER. The BUYER shall notify the SUBCONTRACTOR of any warranty claim within thirty (30) days after discovering the basis to raise such claim.

The SUBCONTRACTOR shall bear all costs and risk for correction or replacement of defective supplies or services, and in the case of supplies, for the cost of return of conforming supplies to the BUYER. Any of the supplies or parts thereof, corrected or furnished in replacement under this warranty provision, shall also be subject to the terms of this paragraph to the same extent as the supplies initially delivered. If replacement or correction is not completed promptly after notice of the defect or if a cure does not appear feasible, the BUYER shall have the right to either (i) obtain equivalent supplies or services from other sources (or to provide such supplies or services from internal sources) and to charge the cost thereof to the SUBCONTRACTOR or (ii) demand a refund of the funds paid by the BUYER for the defective supplies or services. At the BUYER’s authorized procurement representative's request, the SUBCONTRACTOR shall provide a schedule for completing any proposed cure for defective supplies or services. Failure to provide a schedule within ten (10) working days shall be deemed grounds for the BUYER to exercise its rights under this provision.

If the SUBCONTRACTOR disputes the BUYER’s warranty claim, the SUBCONTRACTOR shall nevertheless proceed to correct or replace the defective supplies or services. In the event it is later determined that the supplies or services were not defective, the BUYER shall equitably adjust the amount paid, or to be paid under the Subcontract to compensate the SUBCONTRACTOR for the additional supplies or services provided, subject to offset for any conforming supplies returned by the BUYER.

The SUBCONTRACTOR shall provide instructions for pick up or disposal of defective supplies. Notwithstanding the provision entitled “Final Acceptance” hereof, title to, and risk of loss of, defective supplies that are returned for replacement or refund shall revert to the SUBCONTRACTOR upon notice of the defect. If the SUBCONTRACTOR fails to furnish timely disposition instructions, the BUYER may dispose of the defective supplies for the SUBCONTRACTOR’s account in a reasonable manner. The BUYER is entitled to reimbursement from the SUBCONTRACTOR, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the defective supplies, as well as for excess costs incurred or to be incurred as a result of the breach of warranty. The rights and remedies of the BUYER provided in this paragraph are in addition to and do not limit any rights afforded to the BUYER by applicable law or any other term of this Subcontract.

Without limiting the SUBCONTRACTOR’s liability under the warranties set out above, the SUBCONTRACTOR shall assign to the BUYER all manufacturer's warranties for supplies provided to the BUYER or other property acquired by the SUBCONTRACTOR at the BUYER’s expense to which
the BUYER takes title under the provision entitled “Final Acceptance” in the BUYER’s general provisions.

ARTICLE 5.0 CHANGES – FIXED PRICE – FAR 52.243-1 (AUG 1987) (MODIFIED)

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.
(2) Method of shipment or packing.
(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, the Buyer shall make an equitable adjustment in the subcontract price, the delivery schedule, or both, and shall modify the subcontract.

(c) The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Buyer decides that the facts justify it, the Buyer may receive and act upon a proposal submitted before final payment of the subcontract.

(d) If the Subcontractor’s proposal includes the cost of property made obsolete or excess by the change, the Buyer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor’s from proceeding with the subcontract as changed.

(End of Clause)

Alternate I (Apr 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.
Alternate II (Apr 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Description of services to be performed.
2. Time of performance (i.e., hours of the day, days of the week, etc.).
3. Place of performance of the services.
4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer, in accordance with the drawings, designs, or specifications.
5. Method of shipment or packing of supplies.
6. Place of delivery.

Alternate III (Apr 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Subcontractor shall be furnished without the prior written authorization of the Buyer.

Alternate IV (Apr 1984). If the requirement is for transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Specifications.
2. Work or services.
3. Place of origin.
4. Place of delivery.
5. Tonnage to be shipped.
6. Amount of Buyer-furnished property.

Alternate V (Apr 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following subparagraphs (a)(1) and (a)(3) and paragraph (b) for subparagraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:
(a)

(1) Drawings, designs, or specifications.
(3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this subcontract, whether or not changed by the order, the Buyer shall make an equitable adjustment in --

(1) The subcontract price, the time of performance, or both; and
(2) Other affected terms of the subcontract, and shall modify the subcontract accordingly.

ARTICLE 6.0 SUPPLEMENTAL TERMS AND CONDITIONS

General Intent. This agreement is subject to the terms and conditions of BUYER’s Prime Contract Number DE-AC27-08RV14800. The general intent of these provisions is to incorporate into the purchase order or Subcontract all required Federal Acquisition Regulation (FAR) flow down clauses, and any other State or Federally-mandated Subcontract clauses, which are required to be so incorporated either by the FAR, BUYER’s Prime Contract or the applicable State or Federal law.

To reference the cited FAR flow down clauses, the following links are provided:

http://farsite.hill.af.mil/
http://farsite.hill.af.mil/vmdoea.htm
https://www.acquisition.gov/

Substitution of the Parties. Wherever required to make any FAR clause incorporated herein meaningful, the term “Contractor” shall be read “Subcontractor,” the term “Administrative Contracting Officer” or “ACO” shall be read “AUTHORIZED PROCUREMENT REPRESENTATIVE,” the term “Head of the Contracting Activity” shall be read “HEAD OF THE PROCUREMENT ACTIVITY” - and the term “Government” or “Contracting Officer” shall be read “BUYER.”

Specific Incorporated Clauses. Without in any way limiting, the following FAR clauses are hereby specifically incorporated herein by reference with the same force and effect as if they were given in full text.


Applicable to all orders:

1. FAR 52.211-5, Material Requirements (Aug 2000).
2. FAR 52.246-2, Inspection of Supplies (Aug 1996).