

**EXHIBIT C**  
**Pay-For-Performance Agreement**  
**and**  
**General Terms**

**Agency Interest Number:** \_\_\_\_\_

**Incident Number(s):** \_\_\_\_\_

**Facility Name:** \_\_\_\_\_  
**(the 'Site')**

**Address (Street, City):** \_\_\_\_\_  
\_\_\_\_\_

**Owner/Operator Name:** \_\_\_\_\_

**Owner/Operator Address:** \_\_\_\_\_  
\_\_\_\_\_

**Response Action Contractor:** \_\_\_\_\_  
**(the 'Contractor')**

**RAC Address:** \_\_\_\_\_  
\_\_\_\_\_

**RAC Representative:** \_\_\_\_\_

**LDEQ Team Leader:** \_\_\_\_\_

**General Terms:**

1. The Contractor agrees to perform all activities and services under this Agreement in accordance with Attachment A. The Contractor also agrees that the site characterization is complete within the identified Area of Investigation (AOI) as defined in the latest version of the Risk Evaluation/Corrective Action Program (RECAP) Report. The Site Investigation and/or RECAP Evaluation Reports may be accessed through the Louisiana Department of Environmental Quality **(the 'Department')** Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA 70802 or through <https://edms.deq.louisiana.gov/prr/RequestForm.aspx>. Most records of the Department are available in the Department's Electronic Document Management System (EDMS) at <http://edms.deq.louisiana.gov>. Contamination discovered at a later date in the AOI will not change the terms of this Agreement except for the conditions specified under General Terms, "13."

2. The remediation services provided by the Contractor will comprise, without exception, every discipline and expertise necessary to meet all the requirements of Attachment A. The Contractor will perform all remediation activities in accordance with all applicable federal, state and local statutes, rules, regulations, procedures, and guidelines. Although the Contractor's role will be the management of all aspects of site remediation, in no way does this Agreement supersede the responsibilities and liabilities of the owner/operator.
3. Any and all such equipment, products or materials necessary to perform these activities, services, or requirements, as further stated herein, shall be supplied, owned, and maintained by the Contractor. All maintenance, service, and repair of the remedial equipment and monitoring/recovery wells will be the Contractor's responsibility.
4. The Contractor shall maintain the minimum qualification requirements of a Response Action Contractor (RAC), as defined in LAC 33:XI.1205.A., throughout the duration of this Agreement. Failure to maintain the required qualifications, or promptly correct any lapse, may be considered as a failure to perform within the terms of this Agreement and handled in accordance with General Terms, "26."
5. The Contractor shall hold harmless and indemnify the owner/operator, the Department, and the State of Louisiana against any third party liability from damage caused by the Contractor.
6. The Department's performance and obligation to pay under this Agreement is contingent upon the availability of sufficient funds in the Motor Fuels Underground Storage Tank Trust Fund (Trust Fund). The Department will encumber the funds necessary to conduct the remediation at the Site as specified in this Agreement. If, however, after execution of this Agreement, there are not adequate funds in the Trust Fund to support this Agreement, then the Department will notify the Contractor immediately and the Contractor may withdraw from this Agreement. If the Contractor does withdraw from this Agreement, the Department will reimburse the Contractor for all necessary and appropriate actual time and material costs for work performed from the period of the previously paid milestone to the date of contract termination as funds become available in the Trust Fund, not to exceed the amount of the next unpaid milestone. Such a termination shall not be considered as failure to perform by the Contractor and shall be handled in accordance with General Terms, "18."
7. The Department agrees to authorize payments in accordance with Attachment A, upon receipt, verification, and acceptance of a request for milestone payment. **For every milestone payment request, an original Pay-For-Performance Payment Request Form must be completed and submitted in triplicate along with the supporting documentation to: LDEQ, Underground Storage Tank Division – Remediation Process Administrator, P.O. Box 4314, Baton Rouge, Louisiana, 70821-4314. Once the LDEQ Team Leader reviews, verifies, and accepts the supporting documentation for milestone payment, the Team Leader will sign the original Pay-For-Performance Payment Request Form and forward to the LDEQ, Office of Management and Finance, Financial Services Division, Trust Fund Section for processing and payment. The LDEQ Team Leader will notify the Contractor within**

thirty (30) days following receipt of the request for payment as to whether or not the Department agrees that the milestone has been attained. If the Department agrees that the milestone has been met, then the Department will process the request for payment.

8. In any claim or dispute by the Contractor which cannot be resolved by negotiation with the Department, the Contractor shall submit within thirty (30) calendar days of the last meeting with the Department, a written request to retain a neutral third party mediator to resolve the claim or dispute. The Department and the Contractor will agree upon the mediator. The cost for the mediation services shall be split evenly between the Department and Contractor. The Owner/Operator, Contractor and the Department agree to accept the final written decision on the claim or dispute determined by the mediator.
9. All plans, reports, correspondence, and submittals including but not limited to the *Corrective Action Plan (CAP)*, *CAP Construction and Operation Report*, *Initial Baseline Monitoring Report*, *Groundwater Monitoring Reports*, *Soil Confirmation Reports*, *Well Plugging and Abandonment Reports*, *Conveyance Notification Filing Reports*, etc., shall be submitted by sending one original and one electronic copy to: LDEQ, Underground Storage Tank Division – Remediation Process Administrator, P.O. Box 4314, Baton Rouge, Louisiana, 70821-4314.
10. In the event of an audit of the Trust Fund, the Contractor shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with consistently applied generally accepted accounting principles. The Department considers Contractor's standard accounting procedures to track labor costs and material expenses as acceptable documentation. The Department, the State, or their authorized representatives, shall have access to such records for audit purposes during the term of this Agreement and for three (3) years following Agreement completion. In the event any work is sublet, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.
11. The Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Contractor that the Department shall not be liable to any vendor or subcontractor for any expenses or liabilities incurred under the subcontract and that the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
12. The Contractor will perform as an independent Contractor and not as an agent, representative, or employee of the Department.
13. The Agreement will be final and will not be terminated, or costs increased, or modified for any reason (e.g. unanticipated iron fouling of a system, wells clogging because of biological activity or sediments, increased subcontractor costs, increased utility costs, loss of utilities, modification to the system to meet the remediation goals, etc.) with the exception of the following conditions:
  - a. Identification of a new release that affects attainment of a milestone;
  - b. migration of off-site contamination onto the subject site that affects attainment of a milestone;

- c. changes in applicable regulatory requirements or policies that affect remedial design, operations or remediation goals;
  - d. events beyond the control of the parties that make performance or timely performance impossible; and
  - e. other conditions that are mutually agreed to by the Contractor and the Department.
14. The Agreement may be terminated if a *Force Majeure* event destroys or otherwise renders the existing remedial strategy inoperable or impossible to implement. *Force Majeure* events shall include hurricanes, tornados, floods, wildfires, and wars. *Force Majeure* events shall not include lightning strikes, heavy rains, high winds, hail, freezing temperatures, damage caused by vandalism, theft, or other acts of third parties, including damage resulting from collision by a motor vehicle. Such a termination shall not be considered as failure to perform by the Contractor and shall be handled in accordance with General Terms, “18.”
15. In the event that the remediation schedule is delayed for more than ninety (90) calendar days and such delay is due to circumstances beyond the control of the Contractor, then the time for the performance of remediation may be extended. However, any such delay shall not be cause for an increase in the price of the Agreement. In the event that the remediation schedule is delayed for more than 180 calendar days, then either the Contractor or the Department may terminate this Agreement. Such a termination shall not be considered as failure to perform by the Contractor and shall be handled in accordance with General Terms, “18.”
16. The Contractor shall be responsible for payment of all utilities necessary to complete the remediation, including electricity, propane, sanitary sewer, telephone, etc.
17. All applicable certification, training, permits, applications, and fees associated with soil borings and well installation; injection, discharge, treatment, or transportation of groundwater, air, or soil; construction or operation of a remediation system; and any other action requiring a permit are the responsibility of the Contractor.
18. In the event this Agreement is terminated by General Terms “6”, “13”, “14”, “15”, or “24”, and such termination is not due to failure to perform by the Contractor, then payment for any unachieved milestones or partial payment of milestones shall not be due the Contractor. However, the Contractor shall be paid for all necessary and appropriate actual time and material costs, including demobilization, for work performed from the period of the previously paid milestone to the date of contract termination, not to exceed the amount of the next unpaid milestone. Any such payments made shall completely satisfy the Department’s obligation to the Contractor under this Agreement.
19. The Contractor shall immediately notify the Department (within 24 hours) upon discovery of a significant change in site conditions. This notification must be followed up in writing within seven (7) days upon discovery of the significant change. The following are examples of significant changes in site conditions:
- a. An emergency or imminent hazard which could require the contractor to make changes to the remedial system to mitigate the hazard;

- b. measurable free product is found at a monitoring point for the first time;
  - c. the remediation system has shut down for more than a week;
  - d. a sensitive receptor has been impacted, such as elevated VOCs in indoor air, utility lines, and water supply wells.
20. The Contractor must notify the Department, in writing, at least ten (10) days before making any modification to the remedial system/technology or its operation that may be subject to regulations or results in a modification in air or water treatment. Changing to another remediation technology not previously discussed and approved in the Corrective Action Plan will require the Contractor to prepare and submit a Corrective Action Plan Addendum for approval by the Department.
21. The Contractor shall be responsible for gaining access to all properties (on-site and off-site) to sample monitoring wells, install remediation equipment, conduct any site investigation, or perform any corrective action activity, etc., as required. **The Contractor shall ensure that all property owners (on-site and off-site) affected by the release are in agreement with the proposed corrective action method(s) or technology(ies) prior to submission of a Corrective Action Plan. Failure to secure access and approval of the proposed corrective action method(s) shall constitute a material breach of this Agreement.** The Contractor will also be responsible for returning the site to the condition, as it existed prior to installation of the remediation or monitoring systems, (e.g. removing monitoring wells, manholes/roadboxes, asphalt paved areas will be paved with asphalt, concrete areas will be replaced with concrete, grass areas will have soil replaced to the original grade and seeded or sodded with grass, etc.).
22. The Contractor shall coordinate all work activities at the site with the Owner/Operator to minimize interference with business operations. The Contractor agrees to notify the Department's Team Leader no later than five (5) business days prior to the initiation of the approved response activities. The RAC acknowledges that no site work shall be conducted without a Department representative on site unless approved by the assigned Team Leader. During work activities, the Contractor shall also maintain the site free of debris and in good condition. The RAC shall be responsible for the protection and safety of all workers, materials, equipment, and other property on the sites against vandals and other unauthorized persons during on-site activities.
23. The Department reserves the right to conduct its own sampling events, to install groundwater monitoring wells, and/or to advance soil borings, at any time and at its sole cost and discretion. The Department shall provide notice to the Contractor at least two (2) weeks in advance of such events so that the Contractor will have the option to observe the Department's activities and split samples with the Department. Any and all costs incurred by the Contractor for such participation shall be borne solely by the Contractor.
24. The Department reserves the right to stop work under this Agreement, if it is in the best interest of the State of Louisiana. Any delay in the remediation schedule caused by such order shall be handled in accordance with General Terms, "15."
25. Payment under this Agreement may be withheld by the Department at any time for failure of the Contractor to perform in accordance with the terms and conditions contained herein. The Department will provide notice to the Contractor by certified letter

describing the violated term(s) and/or condition(s). The Contractor will be given a specified number of calendar days to correct all identified deficiencies. In the event of an imminent hazard the Department will notify the Contractor as soon as practical, but may act immediately to abate the hazard. If the Contractor created the hazard and the Department must act to abate, then the Contractor shall indemnify the Department for any third party liability pursuant to General Terms, "5." and reimburse the Department for the actual costs incurred for the abatement.

26. The Contractor acknowledges that the Department may terminate the Contractor's eligibility for future work under a Pay-For-Performance Agreement if the Department determines that the Contractor has failed to perform its duties for site rehabilitation tasks set forth in this Agreement, including a failure to correct deficiencies noted by the Department (see General Terms, "25."). **In the event that the Contractor is determined ineligible for future work under a Pay-For-Performance Agreement, the Department will not accept future Agreements or work proposals from the Contractor for a period of two (2) years from the date of notification of the determination of ineligibility.** For the purposes of this paragraph, the term "Contractor" shall mean the individual or business entity submitting the Agreement or work proposal, and includes a parent or subsidiary corporation of the Contractor; a partner of the Contractor; or a corporate officer, director, stockholder, or other person or group of persons that has the legal or *de facto* authority to control the progress of the site rehabilitation tasks proposed for agreement.
27. If the Contractor abandons any project prior to completion of the remediation period or prior to the end of the warranty period as defined in Attachment A, whichever occurs first, or otherwise fails to fulfill the terms of this Agreement, such abandonment or other failure shall be considered failure to perform by the Contractor and handled in accordance with General Terms, "26." of this Agreement.

If the Contractor fails to achieve the remediation goals, as specified in Attachment A, by the end of the warranty period, it shall not be construed as failure to perform under this Agreement if the Contractor has continued to provide corrective action on a full-time basis. **However, failure to achieve the remediation goals by the end of the warranty period will result in the Contractor being ineligible for any subsequent Pay-For-Performance Agreements on the site for a period of one-year. The one-year suspension is effective from the end of the warranty period.**

28. If the Contractor abandons any activity of the project prior to completion of the remediation period or prior to the end of the warranty period as defined in Attachment A, whichever occurs first, or otherwise fails to fulfill the terms of this Agreement, the Contractor shall ensure the site has been left clean and orderly with all wastes, supplies, unnecessary equipment, products or materials used or generated in the investigation and corrective action activities have been removed and disposed in accordance with State regulations, guidance documents and generally accepted industry practices. **Failure to do so may result in enforcement action by the Department.**

**This Agreement will be effective the day of signing by all parties and may only be cancelled with written notice to all parties under the terms written in this Agreement. All costs incurred in the execution of this Agreement and all activities and services associated with this Agreement are effective the day of signing by all parties.**

\_\_\_\_\_  
Owner/Operator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Response Action Contractor

\_\_\_\_\_  
Date

**The Department approves the terms of this Agreement between the above signed parties and agrees to provide reimbursements for the Trust Fund based on these terms.**

\_\_\_\_\_  
Louisiana Department of Environmental Quality

\_\_\_\_\_  
Date