



NAGS HEAD PUBLIC WORKS
 2200 S LARK AVE
 NAGS HEAD NC 27959

Bill-to address
 TOWN OF NAGS HEAD
 ATTN: KAREN HEAGY
 252-449-4203
 KAREN.HEAGY@NAGSHEADNC.GOV
 5401 S CROATAN HWY
 NAGS HEAD NC 27959

Quotation	
Number/Date	20089817 / 03/10/2023
Reference no./Date	REV 3 - 03/10/2023
Delivery date	Day 03/10/2023
Cust. no.	1044895
Validity period	03/10/2023 to 03/25/2023
Salesperson	227

We deliver according to the following conditions:

Currency USD

Terms of payment Net 30

Terms of delivery FOB SHIPPING POINT

Contact: Edward Bates - Petroleum Sales Representative
Mobile: (757)470-6343 Office: (757)410-0579
edward.bates@spatco.com - www.spatco.com

Material	Qty	Price	Value
INSTALLATION PRICE	1 EA	278,146.92	278,146.92
Installation - Contract Price			

SPATCO ENERGY SOLUTIONS Scope of Work:

Scope of Work to Remove Aboveground Petroleum Equipment and Re-Install in a new Location and Install a new Canopy

Prior to install date coordinate a Pre-Con Meeting with the Town Officials and the Architectural Firm to discuss the Project, Site Plan, Electrical, Permitting and Construction Schedule

Apply for and post the required Permits

Customer to coordinate taking fuel levels in tank down to the pickups prior to install date



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 866-263-7867 757-410-0579 Fax 757-410-1817



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Coordinate with Mrs. Karen Heagy at 252-449-4203 prior to install date to gain access to the facility.

Secure the area around the Fuel Island and disconnect the two existing Gasboy suction pumps and set aside for future use.

Secure the piping and wiring in the dispenser sumps.

Disconnect and remove the two High Hose Retrievers and set aside for reuse.

Back up the data on the Petro-Vend Fuel Controller if possible, disconnect and remove pedestal and set aside to re-install.

Back up the data on the existing Veeder-Root TLS-450 Plus console, disconnect and remove and set aside to re-install.

Disconnect the FSC 3000 Fuel Controller and the Key Fob Encoder in the Office Manager's Office and set aside for reuse.

Secure the area around the tank field and the underground piping from the Fuel Island to the tank field.

Disconnect the product piping to the Remote Fill Box, remove the Remote Fill Box and set aside for reinstallation. Disconnect the existing piping from the tank to the Remote Fill Box.

Disconnect the conduit and wiring from the AST to the concrete pad and set aside for reuse. Disconnect the anchor bolts securing the tank and prep the tank to be relocated per the customer provided site plan.

Saw cut and access the underground piping from the pumps to the tank pad, remove the product piping from the chase piping and fill the chase pipe as required to secure underground.

Coordinate new placement of petroleum equipment with City Officials.



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Material	Qty	Price	Value
Form and pour new tank pad per customer provided site plan.			
Excavate for safety bollards every 3' around exposed sections of tank.			
Install safety bollards and pour concrete footers to secure the safety bollards per Bid Spec.			
Excavate and form a footer for the new area light pole at the tank field per Bid Spec.			
Install the area light pole anchor bolts and pour the canopy light pole footer.			
Install the existing AST on the new tank pad and anchor.			
Excavate and install a new transition sump for the above ground tank.			
Install the existing remote fill box per the Bid Spec.			
Install the piping and conduit from the tank top equipment to the transition sump.			
Install the new area light pole and two LED area light fixtures for the tank field.			
Saw cut and excavate a trench from the area light pole to the new canopy light conduit at the Fuel Island.			
Excavate and form the four canopy footers per the Bid Spec, install the anchor bolts and pour the concrete for the footers.			
Install the four canopy columns and the canopy beams and purlins per bid spec.			
Install the canopy fascia and decking. Install the LED canopy lights for the Fuel Island and the Vehicle Wash Down area.			
Install conduit from the canopy light fixtures to the junction			





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Material	Qty	Price	Value
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box over the columns and down one column and stub out at the base of the column. Saw cut and excavate for canopy light conduit from the canopy column to the Fleet Maintenance Garage per the Bid Spec.

Pull the canopy light power wiring from the customer provided electrical panel to the canopy column as required per Bid Spec and make the required connections.

Layout and set the two 4' X 6' island forms for the pumps per the Bid Spec.

Excavate and breakout the area under the Island Forms for the new dispenser sumps. Saw cut and excavate a trench from the two new dispenser sumps to the new Transition sump at the Tank.

Install the new product piping and chase from the dispenser sumps for the Regular and Diesel back to the Transition Sump at the tank. Saw cut and break out a trench from the Transition Sump to the dispenser sumps for the conduit and wiring.

Install a 3' X 3' concrete island form in the center between the two pumps for the Petro-Vend Fuel Island Pedestal.

Saw cut and excavate a trench from the two dispenser sumps to the Veeder-Root pedestal for the Fleet Fuel Controller.

Saw cut and excavate a trench from the Petro-Vend Fuel Controller Pedestal to the location in the Fleet Maintenance Garage per the Bid Spec for the two conduits for power and communication for the pumps and the Fuel Controller.

Saw cut and excavate a trench from the Transition Sump at the Tank to the Fleet Maintenance Garage for the power and communication wiring to the tank top equipment.

Install the existing Veeder-Root TLS-450Plus tank monitoring console in the Fleet Maintenance Garage per the Bid Spec.

Customer to provide Internet Access for the TLS-450Plus Console





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Material	Qty	Price	Value
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and the Petro-Vend PV 200 Fleet Fuel Controller.

Install conduit from the customer provided electrical panel to the Veeder-Root TLS-450Plus as required. Pull power thru conduit and make necessary connections.

Pull power wire from the customer provided electrical panel to the two Gasboy pump dispenser sumps, Petro-Vend Pedestal, Canopy Lights, Area Light Pole and tank top equipment at the Tank Pad as required.

Install the existing Gasboy suction pumps on the new Regular and Diesel dispenser sumps. Install the flex pipes from the product lines to the impact valves and connect to the stabilizer bars.

Perform Line Tightness Test on all underground piping and provide the customer with passing Test Results.

Perform the Hydro Test on the new sumps and provide passing results to the Town.

Pour the concrete island pads and the Petro-Vend pedestal pad.

Saw cut and excavate for two safety bollards at the entrance and exit of each pump and the Petro-Vend pedestal.

Install the safety bollards and pour the footers to secure the safety bollards per the Bid Spec.

Backfill all trenches with excavated material and set to grade. Finish with like material.

Re-Install the existing High Hose Retrievers, nozzles, hoses and hanging hardware.

Coordinate a Full Fuel Drop of both products with the Fleet Fuel Manager.

Purge, Calibrate and restart the Regular and Diesel Pumps.





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Install the existing FSC-3000 Site Fuel Controller in the Fleet Managers Office per Bid Spec and connect to customer provided Internet.

Install the Petro-Vend Key Fob Programmer per Fleet Managers instruction.

Confirm that the Petro-Vend Phoenix Software and Network are operational and the Veeder-Root TLS-450Plus Reports are working properly.

Schedule all final inspections for the Permits.

Clean up area.

PLEASE NOTE:

*Customer to complete the demolition and disposal of the existing concrete tank pad, safety bollards and the transition sump.

*Price does not include disposal of contaminated water or soil.

*Price is based on site having H/S Internet at Install time of the electronic equipment as well as the Network cables from the Fleet maintenance Garage to the Managers Office for Mrs. Heagy.

*Price is based on site having a full Fuel Drop upon installation of tank, remote fill box and transition sump.

*Price is based on Site providing the required electrical panels and breakers for the petroleum equipment.

*Price does not include the Permits or Fees or any Environmental Fees for Testing of Soil or Water. Price does not include any additional parts, labor, materials, troubleshooting or training that is not included in the original Scope of Work.

*Any additional work done outside of the original Scope of Work will be billed at the rate of time and materials and will be submitted to the customer on a separate Change Order.





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****Quote is good for 15 days - Due to volatility of the market, material costs may increase before construction begins. If this is the case a change order will be required.**

INSTALLATION PARTS	1 EA	27,692.14	27,692.14
Installation - Contract Parts			

SHE3322	1 EA	92,673.00	92,673.00
50' X 50' CUSTOM CANOPY			

F & I a 50' x 50' (4) column generic canopy:
 * (4) 10" columns w/ PVC internal drain
 * (2) 3/4" electrical conduit
 * 200 lin ft of 36" 3mm Stock ACM
 * 20 GA Emb White Deck
 * .040 Alum Per Gutter, 15'-6"' min clearance
 * Column spacing to be decided
 Hang (16) Canopy Lights - (No Wiring)
 (Customer is responsible for Light Layout to be sent to PAC)
 Galvanize Dip the entire Steel Structure including columns. Please be aware that the color of each pc can vary, customer has been sent a PDF file of acceptable differences in the galvanized process.
 Sealed drawings (electronic only), anchor bolts, and templates are included. All Columns, Main I-Beams, and purlins to be painted using a red primer from Sherwin Williams.

PLEASE NOTE:

***Customer has chosen to wait a year to have the canopy installed, so we have added 7% to the canopy price to cover the material price increase over that time per the Canopy contractor.

LIT280	16 EA	296.00	4,736.00
LSI LED CANOPY LIGHTS			

CRUS SC LED SS 50 UE WHT(BRZ) - Legacy LED Canopy Fixtures



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Material	Qty	Price	Value
13,980 Lumen at 93 watts. 5000K With Cast Alum J-Box			
LIT280 LSI LED AREA LIGHT POLE	1 EA	888.00	888.00
4SQB3 S11G 16 D90 BRZ GAB BC - 4" x 16' Square Poles - Bronze 11 Gauge steel poles with DuraGrip + Finish. Galvanized Anchor Bolts and Base Covers.			
LIT280 LSI LED AREA LIGHT	2 EA	695.00	1,390.00
MRS LED 24L SIL FT UNV DIM 50 70CRI BRZ - Mirada Area Fixtures 22,581 Lumen at 196 watts-Forward Throw Silicone Optics-Bronze			

Items total	405,526.06
Estimated Tax	8,598.10
Final amount	414,124.16

****THANK YOU FOR THE OPPORTUNITY TO QUOTE****

ACCEPTANCE AND EXPIRATION. This quotation, and Seller's offer described in it, will expire on the earlier of (1) 30 days after the date listed on quotation or (2) Seller's giving Buyer written notice that Seller has withdrawn this quotation, unless Buyer accepts this quotation, without any proposed changes, by executing this quotation in the space provided below and delivering it, and the Initial Payment (defined below) to Seller before that expiration. Buyer may not accept, and Seller will have no obligations under, this quotation after it expires.

Price and Initial Payment. The price for this Quote may not include all freight charges, taxes or permits. A deposit of 25% is due and payable with and is a condition of Buyer's acceptance of this quotation. Please note the required deposit may change depending on credit approval. Should the required deposit change, Buyer has the right to cancel this order upon 1 business days notice to Seller.

Terms and Conditions of Sale. This quotation is governed solely by Seller's terms and conditions of sale which are attached to this quotation. Seller's offer described in this quotation is expressly made conditional on Buyer's acceptance of all terms in this quotation, including the terms and conditions. No term of any purchase order or other document shall become a part of the agreement between the parties or bind Seller.



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Accepted By

Date: _____ **Customer:** _____

Date: _____ **Salesman:** _____



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SPATCO Energy Solutions, LLC
TERMS AND CONDITIONS

1. Agreement. The agreement between Seller and Buyer (this “**Agreement**”) consists of the applicable quotation signed by both parties (“**Quotation**”), the applicable statement of work signed by both parties (“**Scope**”), these terms and conditions, and the terms and conditions set forth on invoices delivered by Seller to Buyer. This Agreement shall become effective on the date Buyer executes and delivers it to Seller (“**Effective Date**”), subject to approval of Seller’s credit manager.

2. Work. Seller will perform the Work on the terms and conditions of this Agreement. Seller (a) will install the Equipment at the Job Site in accordance with the current version of the American Petroleum Institute’s Recommended Practice 1615-1987 (the “**API Standards**”) and the Petroleum Equipment Institute’s Recommended Practices for Installation of Underground Liquid Storage Systems (the “**PEI Standards**”) and (b) will install all safety equipment included in the Equipment in accordance with the NFPA 30-1993 Flammable and Combustible Liquids Code or NFPA 30-A1993 Automotive and Marine Service Code, as applicable, (collectively, the “**NFPA Standards**”).

3. Safety Standards. Federal, state and local laws and regulations may impose more stringent standards than the API Standards, the PEI Standards or the NFPA Standards, and Buyer’s insurance carriers may require additional or different equipment. Buyer will ensure that the Work and the Equipment comply with all federal, state and local laws and regulations and with the standards set by Buyer’s insurance carriers. Any changes to the Work or the Equipment to comply with any of those laws, regulations or other standards shall be made in accordance with **Section 6, Change Orders**, below. Buyer will follow all instructions and directions, and use all safety devices, provided by the manufacturers of the Equipment.

4. Price and Payments.

a. Invoices. Seller will invoice Buyer for the cost of each piece of Equipment and all related taxes, insurance and freight charges (“**Equipment Invoices**”) on the earlier of (i) the delivery of that Equipment to the Job Site, or (ii) the delivery of that Equipment to Seller’s warehouse for storage. Buyer will pay each Equipment Invoice within 10 days after the invoice date. Seller will invoice Buyer for all services (“**Service Invoices**”) on a monthly basis, and Buyer will pay each Service Invoice within 30 days after the invoice date. Seller will give Buyer a credit against the initial amounts due under the Equipment Invoices and the Service Invoices in the amount of the Initial Payment (defined in the Quotation). Buyer shall not withhold payment based on any typographical or similar error in any invoice. All amounts Buyer does not pay as and when due shall accrue interest at the rate of 18% per annum until paid. Buyer shall pay all of Seller’s costs of collection, including reasonable attorneys’ fees. No partial payment by Buyer shall constitute an accord and satisfaction or otherwise satisfy the entire outstanding balance of any invoice of Seller, notwithstanding any notation or statement accompanying that payment. **Payment Terms for Wayne Equipment are Net 10 Days.** _____ (Initial)

b. Taxes. The Price (defined in the Quotation) does not include any sales, use, revenue, excise or other taxes or governmental charges (collectively, “**Taxes**”). If Seller is required to collect any Taxes, Seller will add them to the Price and invoice Buyer (in the original invoice or separately), and Buyer will pay them.

c. Permits. The Price does not include any fees for any building or other government permits, licenses, tests or inspections necessary to perform the Work (collectively, “**Permits**”). Buyer will obtain and pay for all Permits, confirm to Seller in writing that it has done so, and deliver to Seller copies of all Permits, all before Seller begins the Work. If Seller pays any fees for any Permits, Seller will add them to the Price and invoice Buyer (in the original invoice or separately), and Buyer will pay them.

d. Weekends and Holidays. The Price does not include the extra costs of Seller’s performing any of the Work on Saturdays, Sundays or holidays. If Buyer and Seller agree that Seller shall perform some of the Work on Saturdays, Sundays or holidays, Buyer will pay Seller, in addition to the Price, an extra charge equal to the number of hours of Work performed multiplied by twice Seller’s standard labor rate.

e. Performance Bond. The Price does not contain any allowance for a performance bond. If Buyer requests, and Seller agrees to provide, a performance bond for some or all of the Work, as a condition to Seller’s providing the bond, Buyer will pay directly all premiums and other costs of the bond.

f. Not Included. Unless otherwise stated in the Scope of Work (Attachment A), no electrical work, concrete or asphalt work, tank tests or line tests are included in the Price or the Work.

g. Security Interest. Buyer hereby grants and Seller retains a purchase money security interest in the Equipment, including the proceeds therefrom, for the purpose of securing Buyer’s obligation to make payment in full, until payment is received in full in cash or collected funds, at which time the security interest shall cease. Seller may, at its option, repossess the Equipment upon Buyer’s default, and charge Buyer with any deficiency. Buyer hereby authorizes Seller to file appropriate financing statements for perfecting this security interest. If the work is to be performed on property not owned by Buyer, upon Seller’s request, Buyer shall provide a Landlord’s Waiver in a form acceptable to Seller.

Seller reserves the right to ship under reservation for payment against documents of title. Title and a first and prior security interest to the Equipment shall remain with the Seller until all payments are made and all conditions herein contained are and have been fully completed. The Equipment shall at all times be deemed personal property, even after attachment or connection to realty. The Buyer shall keep the Equipment in good working condition and physical appearance free of liens, and until the purchase price is fully paid shall maintain such insurance as described below under **Insurance**.

5. Job Site Conditions.

_____ (Customer Initials)

_____ (Sales Rep. Initials)

a. **Digging and Excavating.** Any digging or excavating included in the Work is based on the assumption that the soil conditions at the Job Site are normal for the area and unobstructed. If any digging or excavating is included in the Work, and Seller encounters unusual digging conditions in connection with the Work, Buyer shall pay Seller its standard hourly labor rates for those personnel involved in overcoming those conditions. Unusual digging conditions are conditions that inhibit Seller from completing the digging in a reasonable manner using a backhoe or trackhoe, including heavy rock, shale and water. If Seller is required to have any of this Work performed by a subcontractor, Seller will invoice Buyer those costs plus 20%. Seller will notify Buyer of any unusual digging conditions before Seller commences the extra Work to overcome those conditions, and Buyer will have five days to decide whether to authorize Seller to perform the extra Work or to terminate this Agreement. If Buyer elects to terminate this Agreement as a result of those conditions, Buyer shall pay Seller, as a condition of being entitled to exercise its right to terminate, an amount equal to all hours spent by Seller's personnel performing the Work multiplied by Seller's standard hourly rates for those personnel, plus all of Seller's out of pocket costs incurred in connection with the Work, including all restocking fees for Equipment that can be returned and Seller's quoted selling price to Buyer for all Equipment that cannot be returned; **provided** that the amount of this payment shall not exceed the Price.

b. **Underground Structures.** Buyer shall inform Seller in writing of the location of all underground structures, including tanks, product lines, cables, conduits, sewer lines and water lines, where the digging or excavating is to occur before Seller starts any of the Work at the Job Site. Buyer shall indemnify, defend and hold Seller and its affiliates and their respective directors, officers, managers, employees and agents harmless from and against all claims, losses, damages, costs and attorneys' fees and expenses resulting from Seller's encountering any such underground structure unless Buyer informs Seller of the correct location and size of the structure before Seller commences the Work.

c. **Tank Filling.** Buyer shall have product or water available at the Job Site to fill all tanks as requested by Seller or as required by applicable law. Seller does not guarantee that the tanks will not float. Buyer will be responsible for all damage that may be caused by tanks floating under all circumstances, including all costs for equipment, labor and materials required to reinstall the tanks. Unless Seller's quotation expressly quotes a price for ballasting tanks, Buyer is responsible for ballasting tanks to capacity. Seller is not responsible for ballasting tanks or for any water removal or disposal from tanks. In addition, Seller is not responsible for filling the tanks with petroleum products or any associated overfill releases. Buyer is responsible for all overfills and releases under all circumstances.

d. **Photography.** Buyer hereby grants Seller permission to take still photographs and video recordings of all aspects of the Equipment and the Work.

e. **Electricity.** Buyer will provide, at Buyer's expense, at the Job Site all electrical power Seller at its subcontractors require for the operation of their tools and equipment.

f. **Materials Safety.** Buyer will provide Seller, PRIOR TO COMMENCEMENT OF THE WORK, Material Safety Data Sheets on all chemical products used by Buyer in connection with the Job Site.

6. **Change Orders.** Buyer may request changes in the Work, including the Equipment, by delivering to Seller a written request specifying in detail the proposed changes. If Seller agrees to make those changes, it shall deliver to Buyer a proposed change order ("**Change Order**") specifying the changes Seller will make and any associated change in the Price. The Change Order will not become effective or part of this Agreement unless and until Buyer executes it and delivers it to Seller, at which time the Change Order will become an amendment to this Agreement. Except as expressly provided in the Change Order, all provisions of this Agreement shall remain unmodified and in full force and effect.

7. **Warranties.**

a. **Equipment.** The sole and exclusive warranty for the Equipment shall be the manufacturer's warranty ("**Equipment Warranty**"), and Buyer's sole and exclusive remedy for a breach of the manufacturer's warranty shall be the remedy provided by the manufacturer. Seller does not provide any warranty for any of the Equipment.

b. **Services.** For a period of one year after the date of the particular Invoice for services provided in connection with the installation of the Equipment ("**Services Warranty Period**"), Seller warrants that all services Seller performs as part of the Work reflected in that invoice will be rendered in accordance with good commercial practices and comply in all material respects with the API Standards, PEI Standards, NFPA Standards and any other standards expressly listed in the SOW or these Terms and Conditions (the "**Services Warranty**"); provided, however, that with respect to any tank cleaning services provided by Seller, no warranty is made that the tank will be free of impurities after such cleaning has been completed, and Seller shall have no liability or responsibility for any such impurities. If Buyer delivers to Seller written notice specifying the services that do not comply with the Services Warranty and the reasons Buyer believes they do not comply within the Services Warranty Period, Seller, at Seller's option, will correct or re-perform the non-complying services or refund to Buyer that portion of the Price charged for those services. This **Section 7.b.** contains Buyer's sole and exclusive warranties and remedies for any services that are part of the Work.

c. **NO EMPLOYEE OR REPRESENTATIVE OF SELLER IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY.**

d. **Conditions.** The Equipment Warranty and the Services Warranty shall be null and void if (a) the Equipment or the Work are abused, misused, damaged by accident, used or operated contrary to Seller's or the manufacturer's instructions, or modified by anyone other than Seller, (b) the Equipment or the Work are not maintained in accordance with Seller's instructions or are given inadequate care, (c) Buyer does not pay the Price as and when due, (d) replacement parts other than those provided by Seller are installed in or on the Equipment, or (e) Buyer does not allow Seller access to the Equipment or the Work for purposes of inspection, repair or replacement. Seller shall not be responsible for the failure of any other person or entity (collectively, "**Person**") engaged by Buyer to install any electrical wiring correctly in accordance with the Equipment manufacturer's instructions. Buyer shall give Seller immediate written notice of any warranty claim,

_____ (Customer Initials)

_____ (Sales Rep. Initials)

shall allow Seller access to the Equipment and the Work to inspect, repair or replace the Equipment and the Work. Seller will not accept, pay or reimburse any invoices or charges for any warranty work performed by others. Notwithstanding anything to the contrary in this Agreement, Seller shall not be responsible for any damages resulting from the negligence of the Buyer or the failure of the Buyer to monitor the operation of all Equipment on a daily basis in accordance with standards established by the underground storage tanks regulations set forth in 40 C.F.R. Part 280 or any other applicable law, including Environmental Laws (defined below), affecting the operation of the Equipment, and Buyer shall be fully responsible for all of those damages.

e. Buyer Indemnity. Buyer agrees to hold Seller harmless from and defend and indemnify it against any of Seller's or Buyer's losses in connection with any property damage, personal injury or death, whether same relates to any claim, penalty, or fine by government agency for pollution, environmental damage, clean up, or otherwise, or whether any claim is made by any third party against Seller or Buyer or said damage, personal injury or death is claimed or sustained by Buyer or made against Buyer or Seller in connection therewith, including but not limited to damages, costs, expenses, and attorney's fees, except to the extent that said damage, personal injury or death is proven to have been caused by Seller's sole negligence. Where a penalty, fine or claim for pollution damage or cleanup is made against Seller in connection with installation of materials or equipment, Buyer agrees to hold Seller harmless from and defend and indemnify it against same.

f. Drawings. When specifically included in the Work, site drawings, installation plans, and as-built drawings will be prepared using a current Buyer-provided scale drawings showing property lines, rights of way, easements, utilities, driveways, buildings and improvements. Any drawings furnished in connection with the bid proposal or Work was for bid purposes only and is the property of Seller. If such drawings are used without a professional or registered engineer's stamp, Buyer uses it at its own risk with full and complete indemnity to Seller for any acts, errors, omissions or damages that may arise out of using such drawings.

g. Independent Contractor. Seller, in furnishing services hereunder, is acting only as an independent contractor. Seller does not undertake by this Agreement or otherwise to perform any obligations of Buyer, whether regulatory or contractual, or to assume any responsibility for Buyer's business or operations.

h. Substitution. Any identification of Equipment by brand name, manufacturer, catalog number, or other designation in Buyer's purchase order, Seller's documents or elsewhere only establishes a general quality standard and does not require Seller to supply a particular item. Seller shall have the right to select other Equipment that in Seller's opinion meets that general quality standard.

8. Risk of Loss. The shipping terms are F.O.B Shipper's Dock. Whenever merchandise is delivered to the designated F.O.B. point, a common carrier (by manufacturer or Seller), or is received by Buyer, whichever is earlier, Seller's responsibility ceases and full risk of loss (including transportation delays and losses) and title passes to Buyer, and Buyer shall be liable to Seller for the full price of the merchandise. Delivery to Seller's plant for purposes of convenience, coordination or price protection shall be considered "delivery" for invoice purposes.

If any damage is evident upon delivery, Buyer must make a notation on the freight bill of lading and have the carrier's agent sign upon delivery for claim record. Buyer must immediately notify Seller and file a claim with the carrier, as Seller assumes no responsibility for goods damaged in shipment. Shortages and hidden damages or defects to goods must be reported to Seller and carrier within 30 days of receipt of shipment. The quoted prices do not include the cost of unloading, which is Buyer's responsibility.

9. Disclaimers and Limitations. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 ABOVE, SELLER DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND AS TO THE EQUIPMENT AND WORK, EXPRESS AND IMPLIED, INCLUDING ALL REPRESENTATIONS AND WARRANTIES: (A) AS TO THE DESIGN, QUALITY OR CONDITION OF THE EQUIPMENT; (B) AS TO MERCHANTABILITY OR THE FITNESS OF THE EQUIPMENT OR WORK FOR ANY PARTICULAR PURPOSE; (C) AS TO THE SUITABILITY OF THE EQUIPMENT OR THE WORK FOR BUYER'S PURPOSES OR THE IMPACT OF THE EQUIPMENT OR THE WORK ON BUYER'S OPERATIONS. Buyer must give Seller written notice of any claim that it has regarding the condition, quantity or quality of the Equipment within 30 days after the delivery of the Equipment (or with respect to the nonconformity of the Equipment with the manufacturer's warranty, within the period specified in the manufacturer's warranty). Buyer must give Seller written notice of any nonconformity of the Work with the Services Warranty within the applicable Service Warranty Period. The notice must specify the basis of Buyer's claim in detail and identify the Equipment or the Work at issue. Seller shall have a reasonable opportunity to inspect the Equipment or the Work at issue and a reasonable time to cure any nonconformity. Buyer's failure to comply with this Section shall constitute Buyer's acceptance of the Equipment and the Work and shall bind it to pay Seller the full Price of the Work. SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. In no event shall Seller be liable for any amount arising out of or relating to this Agreement, the Equipment or the Work, whether in contract, tort, strict liability or otherwise, in excess of the purchase price of the Equipment or Work at issue. Any action or proceeding by Buyer arising out of or relating to this Agreement, the Equipment or the Work will be forever barred unless it is commenced within the earlier of: (a) one year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. No delay in any of the Work shall entitle Buyer to any reduction of the Price.

10. Cancellation and Return of Goods. Buyer may cancel an order only upon advance written approval of Seller and the manufacturer; provided Buyer pre-pays the freight charges and Seller's reasonable cancellation and restocking charges, and Seller's handling fee equal to 10% of the Price for the Equipment or services that are the subject of the cancellation. No merchandise is returnable without Seller's advance written

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consent. Merchandise must be returned within ten (10) days of Buyer's receipt of written authorization and must be accompanied by the invoice number and/or a copy of the sales receipt. At the option of Seller, return of material prior to receiving Seller's approval will result in material remaining the property of Buyer, and it will be stored at Buyer's risk and expense. If Seller accepts the material in return for credit, a handling charge based in part on acceptance of the material for return by the manufacturer will be charged, and no credit will be issued to Buyer until credit from the manufacturer is received. **Special custom orders (including dispensers) shall be non-cancelable and non-refundable.**

11. Insurance.

a. Seller. Seller shall purchase and maintain during the performance of the Work (i) commercial general liability insurance, including coverage for bodily injury and property damage, that shall cover Seller and its subcontractors in their performance of the Work, and (ii) workers' compensation insurance as required by applicable law. At Buyer's request, Seller shall provide a current certificate of insurance showing Seller has in force the foregoing insurance.

b. Buyer. Buyer shall purchase and maintain commercial general liability insurance, including coverage for bodily injury and property damage to the Equipment, and for meeting any financial responsibility requirements under federal and state underground storage tank regulations. Buyer shall also purchase and maintain until Buyer pays the Final Invoice builder's risk insurance, including extended coverage for fire, theft and vandalism. At Seller's request, Buyer shall provide a current certificate of insurance showing Buyer has in force the foregoing insurance and showing Seller as a loss payee to the extent of its interest.

12. Force Majeure. Seller shall not be liable for delays or failing to perform any of its obligations under this Agreement resulting directly or indirectly, in whole or part, from events or causes beyond its reasonable control, acts of God, accidents, riots, wars, national emergencies, terrorism, strikes, labor disputes, unusual weather, natural disasters, hurricanes, storms, persistent or heavy rain, cyclones, earthquakes, floods, lightning, embargoes, failure by suppliers to deliver or by other contractors to perform, delays in obtaining or the inability to obtain supplies, equipment or labor through normal sources at normal prices, delays of carriers or postal authorities, or governmental restrictions, prohibitions or diversions. The occurrence of any of the foregoing shall operate to extend Seller's time of performance under this Agreement for a period not less than the period of the delay caused by any of the foregoing, plus a reasonable amount of time for remobilization.

13. Seller's Rights Following Default.

a. Seller may, without prejudice to any other right or remedy, terminate this Agreement if: (i) Buyer is adjudged bankrupt or a receiver or trustee is appointed for Buyer, or Buyer is insolvent or makes a general assignment for the benefit of creditors; (ii) Buyer fails to pay any amount when due; or (iii) Buyer materially breaches any of the provisions of this Agreement and does not remedy such breach within ten (10) days following written notice thereof from Seller. In any of those events, Seller also may, at its option, take one or more of the following actions: (i) declare all or part of Buyer's obligations to Seller immediately due and payable, (ii) suspend its performance under this Agreement, (iii) foreclose its security interest in the Equipment and/or repossess the Equipment, (iv) treat such event as a cancellation by Buyer, in which event Buyer shall be obligated to perform the obligations set forth in Section 10 above, or (v) pursue its other rights and remedies under this Agreement or applicable law.

b. Upon termination of this Agreement by Seller, Seller shall have the right to remove equipment, tools and machinery owned by it from the Job Site, and shall be paid for all work done under the Quotation, for all materials and supplies obtained by Seller pursuant to the Quotation and for all costs and expenses incurred by Seller to date of termination. Buyer also shall pay all costs of collection, including reasonable attorneys' fees and costs.

14. Environmental.

a. Representations and Warranties. Buyer hereby represents and warrants to Seller that currently and at all times until Buyer pays the Price in full: (i) no Hazardous Substances are or will be present in, on or under the Job Site, including the air, surface water, land surface and groundwater; (ii) the Job Site and Buyer's operations on the Job Site are and will be in full compliance with all Environmental Laws; (iii) Buyer has the authority to authorize the installation of the Equipment and the performance of the Work as provided in this Agreement and has obtained all necessary consents from the owners of the Job Site for the same; (iv) Buyer has obtained all necessary permits and licenses to install the Equipment and to perform the Work; (v) Buyer and the Job Site are and will remain in full compliance with the underground storage tank regulations in 40 C.F.R. Part 280, including the financial responsibility regulations in Subpart H of the same; and (vi) the installation of the Equipment and the performance of the Work comply with all federal, state and local laws and regulations and with the standards set by the Buyer's insurance carriers, including all requirements restricting the location of, or imposing special requirements regarding, underground storage tank systems at or around wells, surface water and other sensitive receptors.

b. Regulations. Buyer is solely responsible for compliance with all of the underground storage tank regulations set forth in 40 C.F.R. Part 280, including as they relate to the installation of the Equipment and the performance of the Work.

c. Inspection and Reporting Responsibilities. Seller is not responsible for inspecting the Job Site or reporting to third parties, including governmental agencies, any Hazardous Substances or any violations of Environmental Laws relating to the Job Site or the Work. Buyer has the responsibility for inspecting the Job Site and reporting to third parties.

d. Indemnity. Buyer shall indemnify, defend and hold harmless Seller and its affiliates and their respective directors, officers, managers, employees and agents from and against any and all claims, actions, proceedings, liabilities, fines, losses, damages, costs, judgments, attorneys' fees and consultants' fees and expenses arising out of or relating to (i) the presence, suspected presence, release or threatened release, before or after the Effective Date, of any Hazardous Substances in, on or under the Job Site and any migration of those Hazardous Substances before or after the Effective Date, (ii) any activities, use or operations on the Job Site by Buyer or any other Person or their respective predecessors, successors, assigns, affiliates, directors, officers, managers, employees, invitees, contractors, vendors and

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agents, (iii) any violation of or failure to comply with Environmental Laws at or relating to the Job Site, (iv) allegations that Seller is a handler, generator, owner, operator, treater, storer, transporter or disposer of any underground storage tank or Hazardous Substance in, on, under, located on or otherwise associated with the Job Site, (v) the use, ownership, maintenance, transfer, transportation or disposal of the Equipment after completion of the Work or while under Buyer's control, or (vi) any breach, misrepresentation, inaccuracy or failure to perform any representation, warranty or covenant made by Buyer in this Agreement.

e. Definitions. "Hazardous Substances" means any and all substances, materials, wastes, pollutants and contaminants which are now or at any time in the future defined as hazardous or toxic or are prohibited, limited or regulated by any Environmental Law (defined below) or that, if not so defined, prohibited, limited or regulated, could or do pose a hazard to health, safety or the environment, including any asbestos, asbestos-containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials, petroleum, petroleum products and petroleum by-products. **"Environmental Laws"** means any and all present or future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental and/or judicial directives or requirements, as well as common law, relating to the protection of human health or the environment and that are applicable to Buyer, Buyer's business, Seller, the Job Site or any operations now or previously conducted on the Job Site, including the federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and any analogous state and local laws.

15. Hardware/Software.

a. In connection with this Quotation, the parties assume that any system hardware and software supplied by Buyer and/or Seller is inherently compatible and requires only routine start-up and programming. If on start-up, it is discovered that the hardware and/or software is not compatible or has innate deficiencies that require additional configuration or upgrading, Seller will be held harmless from any resulting delays in completion of the Work, and shall be entitled to full payment of the Price.

b. Seller and its licensors, if any, shall retain title to all software integrated in or accompanying the Equipment. Buyer shall only have the limited, nonexclusive right to use the software in object code form only as specified by Seller or its licensors in order to operate the Equipment. Buyer shall not, and shall not allow any person or entity to, (a) remove, modify, copy, reverse engineer, decompile or disassemble the software, (b) merge the software with other programs, or (c) install any other software on the Equipment. Buyer may transfer this limited right to use the software to a third party only if it does so together with the Equipment and only if the transferee executes and delivers to Seller before the transfer a written agreement to be bound by this Agreement.

16. General. Any notice permitted or required under this Agreement shall be deemed given if in writing and delivered personally, deposited in the United States mail, certified mail, return receipt requested, or sent by facsimile to the respective addresses of Seller and Buyer listed in the Quotation. Buyer may not assign to any person or entity all or a portion of its rights or obligations under this Agreement without Seller's prior written consent, and any attempted assignment without that consent shall be void. Seller reserves the right to subcontract portions of the Work and to correct clerical and typographical errors in any document. This Agreement and any controversy relating to it or the Equipment or the Work shall be governed by the laws of the State of North Carolina, excluding its conflicts of law principles. The United Nations Convention on the International Sale of Goods is expressly excluded and shall not apply. Any action or proceeding relating to this Agreement or its enforcement, or to the Equipment or the Work, shall be commenced and heard only in the state courts for Mecklenburg County, North Carolina or the United States District Court for the Western District of North Carolina. Seller and Buyer hereby consent and submit to the jurisdiction and venue of those courts. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their respective successors, heirs and permitted assigns. No delay in exercising any right under this Agreement shall constitute a waiver of that right. If any provision of this Agreement is held to be illegal, unenforceable or invalid for any reason, the remaining provisions shall not be affected or impaired. The word "including" shall not be deemed to be limiting. If there is any conflict between the provisions of these Terms and Conditions, the Quotation and the Scope, the provisions of these Terms and Conditions shall control. **Sections 5.d., 7, 9, 13, 14.d., and 15.b.** shall survive the termination of this Agreement for any reason. This Agreement contains the entire agreement of the parties relating to the Equipment or the Work and supersedes all previous and contemporaneous agreements, understandings, usages of trade, and courses of dealing, whether written or oral. This Agreement may be modified only by a written agreement, signed by both parties, expressly modifying this Agreement.

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