CONTRACT #1
RFS # 327.32-021

Department of Environment and Conservation

VENDOR:
EnergySolutions, LLC

RECEIVED
SEP 04 2007
FISCAL REVIEW

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

JAMES H. FYKE
COMMISSIONER

PHIL BREDESEN
GOVERNOR

August 31, 2007

Mr. James W. White, Executive Director
Fiscal Review Committee
8th Floor, Rachel Jackson Building
320 Sixth Avenue North
Nashville, Tennessee 37243

Dear Mr. White:

The purpose of this contract is remediation, decontamination and decommissioning of a site contaminated by low-level radioactive waste and other pollutants. The scope of services shall include, but not be limited to, site surveillance, historical site assessment, investigation, removal, recycling, remediation and decontamination.

The site, the former ATG, Inc., consists of approximately 6.3 acres. It includes a building, parking areas and is enclosed by a chain link fence. TDEC issued a license to ATG for the operation of a low-level radioactive waste handling facility at the Site on December 7, 1998.

On December 3, 2001, ATG, Inc. filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court"). On February 11, 2002, the Bankruptcy Court entered an order approving the appointment of Robert I. Hanfling ("Hanfling" or the "Trustee") as Chapter 11 Trustee for ATG. On June 12, 2002, pursuant to the authority vested in him under the Bankruptcy Code, the Trustee filed voluntary petitions under Chapter 11 for each of ATG's three wholly owned subsidiaries: ATG Catalytics, LLC; ATG Richland Corp.; and ATG Nuclear Services, LLC. On April 27, 2004, the Bankruptcy Court entered an order converting ATG's bankruptcy cases to cases under Chapter 7 of the Bankruptcy Code and Mr. Hanfling was selected to serve as the Chapter 7 Trustee for ATG and its subsidiaries.

On November 12, 2004, the Trustee filed a motion with the Bankruptcy Court ("Trustee's Motion") seeking entry of an order pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code authorizing the Trustee to sell all assets related to the ownership and operation of the Facility ("Assets") free and clear of all liens, claims, interests and encumbrances, as set forth in an asset purchase agreement annexed to the Trustee's Motion. Thereafter, on January 5, 2005, the Bankruptcy Court entered an order authorizing the Trustee to sell the Assets in accordance with the terms of the asset purchase agreement annexed to the Trustee's motion.

The Trustee, on behalf of ATG and its subsidiaries, is anticipated to enter into an asset purchase agreement (the "Bear Creek APA") with EnergySolutions for the sale of the Site and Assets. The Bear Creek APA will be identical in all material respects to the asset purchase agreement

approved by the Bankruptcy Court in its order of January 5, 2005. The Trustee stated that no further order of the Bankruptcy Court is required in order for the Trustee to enter into the Bear Creek APA and transfer legal ownership of the Assets (including the Facility) to EnergySolutions.

Pursuant to the Bear Creek APA, EnergySolutions has agreed to accept title to the Assets, including the Facility, subject to certain terms and conditions. Among such conditions is that EnergySolutions obtain all authorizations, consents, and approvals of all existing government authorities having jurisdiction over the Assets required to permit EnergySolutions to consummate the transaction contemplated in the Bear Creek APA.

The Facility is radioactively contaminated, particularly in the interior portion of the building, and in certain discrete areas outside the building. The public health and environment are at risk if the facility is abandoned or left unsecured to public access. The building(s) both interior and exterior surfaces, abandoned process equipment, materials and wastes on the Site must be characterized, decontaminated if appropriate, salvaged, and/or packaged and disposed in order to render the facility suitable for commercial and industrial activity.

As required by TCA. § 68-212-224, a summary description of all known and available environmental investigations, studies, reports, or documents concerning the Site's environmental condition has been submitted to the Department by Energy Solutions. The Commissioner of Environment and Conservation has determined that EnergySolutions is able to carry out the activities required by the proposed contract.

ATG was used for the packaging, handling and processing of low-level radioactive waste from nuclear utilities, the U.S. Department of Energy and U.S. Military Installations. Structures located at the Site include a process building, outbuilding housing the HEPA banks, the H2S scrubber and the thermal oxidizer, and a guard hut. The areas surrounding the front and sides of the building are paved parking areas. Storm water runoff is directed via a common discharge pipe to a retention pond behind the facility and to Grassy Creek via an outfall structure. The Site is completely enclosed with a chain link fence. The presence of radioactive contamination and the radiation dose rates at the Site's fence line, in the retention basin, and within the Facility are recognized environmental conditions.

Your consideration and approval of the proposed concept and contract will be appreciated.

Sincerely,

James H. Fyke
Commissioner

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED
Commissioner of Finance & Administration Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	327.32-021-08
2) State Agency Name :	Department of Environment and Conservation
3) Service Caption :	Decontamination and Decommissioning of ATG Bear Creek facility
4) Proposed Contractor :	EnergySolutions, LLC
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	November 1, 2007
6) Contract End Date IF all Options to Extend the Contract are Exercised :	October 31, 2012
7) Total Maximum Cost IF all Options to Extend the Contract are Exercised :	$5,040,000.00
8) Approval Criteria : (select one)	☒ use of Non-Competitive Negotiation is in the best interest of the state
	☐ only one uniquely qualified service provider able to provide the service

9) Description of Service to be Acquired :

The Tennessee Dept. of Environment and Conservation ("TDEC") requires services to characterize and remediate the Bear Creek radioactively contaminated site. The project will include, but not be limited to site surveillance, investigation, remediation, removal and decontamination activities at the site. As required by T.C.A. § 68-212-224, a summary description of all known and available environmental investigations, studies, reports or documents concerning the site's environmental condition must be submitted to the Department by EnergySolutions. Also, any additional relevant environmental investigations, studies, reports, or documents concerning the site's environmental condition that come into EnergySolution's possession would be submitted to the TDEC. The exact services that the contractor shall provide to TDEC are to be included in the Remediation Plan, which is to be developed within ninety (90) days of the effective date of the contract.

10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :

The State currently has responsibility for this site on Bear Creek Road in Oak Ridge, Tennessee, due to bankruptcy of the facility operator ATG. The Bear Creek property/facility consists of approximately 6.3 acres. It was used for the packaging, handling and processing of low-level radioactive waste primarily from the utilities industry. Structures located at the Site include a building and a guard hut. The areas surrounding the front and sides of the building are paved parking areas. The Bear Creek facility is completely enclosed with a chain link fence, but is a difficult property to keep secure from trespass. There are known radioactivity hazards within the Bear Creak facility and at the fence line. The amount and degree of radioactive contamination and the radiation dose at the Bear Creek fence line and within the facility are known radioactivity hazards.

Tennessee Code Title 68 Chapter 202 governs Atomic Energy and Nuclear Materials. Under the Chapter, ATG was required to post financial security with the State in order to receive a license to operate the Bear Creek facility. The financial security was forfeited,

which caused the money to be deposited to the radiation reclamation trust fund. That fund is managed by TDEC and is for the purpose of providing site/facility reclamation services. The fund may be expended for the purpose of protecting the public health, safety or welfare. The ATG Bear Creek facility is radioactively contaminated, particularly in the interior portion of the building, and in certain discrete areas outside the building. The public health, safety and welfare are at risk if the facility is abandoned or left unsecured against public access. The facility will need to be decommissioned and the existing waste disposed of in accordance with regulatory requirements. (The decommissioning and disposal activities will hereinafter be referred to as "D & D".)

Currently, the State is paying up to $8,900 per month ($106,800 per year) for security and utilities on the site. Successful clean-up of the Bear Creek site/facility will require considerable "in-kind" contribution from the service provider. Ownership will transfer to the service provider through an "Asset Purchase Agreement" from the bankruptcy trustee. This will return provide the D&D required to protect the public, return the site to use, and relieve the State of any further responsibility for the site.

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

The Division/Department contracted for D&D of another facility in Oak Ridge, in 2001, via RFP. However, in the 2001 project, there was sufficient "financial assurance" available for the clean-up. For Bear Creek it is believed that there is not sufficient money for the State to obtain D&D without the "in-kind" contribution from the service provider in consideration of the related ownership transfer to the proposed service provider.

12) Name & Address of the Proposed Contractor's Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Lindsay Goldberg & Bessemer 630 Fifth Avenue, 30th Floor New York, NY 10111	Peterson Partners 2825 East Cottonwood Parkway, Suite 400 Salt Lake City, UT 84121	Creamer Investments 423 West 300 South, Suite 200 Salt Lake City, UT 84101

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Energy*Solutions* is an international provider of nuclear services and technologies. Formed in 2006 by merging BNG America, Duratek, Envirocare of Utah, and the D&D division of Scientech, subsequent acquisitions include Parallax Inc. (MD) and Nukem Corporation (SC), as well as Safeguard International and Reactor Sites Management Company Limited in the UK. This has brought together complementary services to form an internationally vertically integrated company, and one of the largest providers of services and technologies to safely operate nuclear facilities, as well as safely and securely transporting, processing, and disposing of radioactive materials. The component companies have varying amounts of corporate experience ranging up to 40 years.

The proposed contractor is currently working under a contract with the United States Department of Energy for decontamination and decommissioning (D&D) at the East Tennessee Technology Park. This 6-year contract includes the removal and disposition of materials and equipment from the K-33, K-31, and K-29 Gaseous Diffusion Plant buildings. The three buildings comprise more than 4.8 million square feet of space and more than 328 million pounds of hazardous and radioactively contaminated material, making it the largest nuclear D&D project in progress anywhere in the world.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:	☒ Documentation Not Applicable to this Request	☐ Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:	☒ Documentation Not Applicable to this Request	☐ Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:	☒ Documentation Not Applicable to this Request	☐ Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

Another company had proposed entering a Brownfield Agreement for the clean-up of this property, but on 6/29/05 requested termination of negotiations. TDEC is the licensing agency for facilities that treat and dispose of radioactive waste. As a result, all operators of facilities in Tennessee are known to TDEC. To the knowledge of both TDEC and the bankruptcy trustee, there is not another entity interested in pursuing a clean up of the Bear Creek site/facility, especially considering insufficient funding for the project. EnergySolutions is the only potential contractor positioned to benefit from the property. TDEC's assessment prior to requesting a noncompetitive procurement has involved a number of factors.

Because TDEC is the licensing agency for facilities that treat and dispose radioactive waste, we are continuously aware of those companies. In the past several years, several facilities have gone out of business. As noted above, in 2001 TDEC was involved in contracting for the cleanup of a facility that went out of business. TDEC has been working with the bankruptcy trustee, through the attorney general's office, to find resolution for this property. Through these joint resources, only two potential contractors have been found. The first withdrew from consideration. The second is EnergySolutions.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

There are barriers in this situation that make it in the State's best interest to proceed with a noncompetitive procurement. Based upon TDEC's knowledge of the costs that are customary within this industry, we cannot anticipate that the financial assurance money is enough to purchase all the D&D services necessary to bring the site back into safe use. It is not possible for TDEC to know the full extent of the radioactive contamination at the site. Part of the services to be provided by EnergySolutions will be the characterization of the contamination at the site.

In order to prepare an RFP on the site TDEC would either have to a) provide very limited information about the radioactive contamination, or b) first do an RFP for characterization services and then issue a second RFP for the remediation of the site. In the first scenario, proposers may be forced to inflate their cost proposals. In the second scenario, the funds may be so depleted by the RFP/contract for characterization that the remediation work cannot be funded. In that case the State could remain perpetually responsible for securing the site.

The site is adjacent to EnergySolution's property. EnergySolutions is in the business of conducting such operations. Because EnergySolutions is a vertically integrated nuclear services company with its own disposal facilities, the proposed contractor can perform the D & D activities at a lower price, thus allowing more work to be done with the available money, so that the site can be returned to use. EnergySolutions is uniquely situated to perform the activities because their facility already adjoins the Bear Creek property. They can easily move equipment from their adjacent property over to the site to conduct remedial activities. This proximity also gives EnergySolutions an interest in acquiring the property from the bankruptcy estate.

REQUESTING AGENCY HEAD SIGNATURE & DATE :
(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

	8/30/07
Agency Head Signature	**Date**

DRAFT

CONTRACT
BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
AND
ENERGYSOLUTIONS, LLC

This Contract, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the "State" and EnergySolutions, LLC, hereinafter referred to as the "Contractor," is for the provision of Remediation and Decontamination and Decommissioning (D&D) of a site contaminated by low level radioactive waste and other pollutants, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Limited Liability Company.
Contractor Federal Employer Identification or Social Security Number: 36-3797690
Contractor Place of Incorporation or Organization: Delaware

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. **Phase I Activities**

Upon the effective date of this contract, and receipt of a Radioactive Material License for D&D activities, from the State, the Contractor shall perform the following:

a. stabilize building structures on the Site;

b. re-establish and maintain required utilities in buildings including the facility HEPA ventilation system (if the ventilation system is operated as indicated;

c. maintain the integrity of the fencing on the property;

d. initiate a Site characterization of the radiation contamination situation for the entire Site. This characterization shall establish the exposure rates around the site, the amount of removable and fixed contamination (gross alpha, beta and gamma) on site surfaces, both internal and external, the concentration of radioactivity (gross alpha, beta and gamma) in the environment external to the buildings including storm water drains, discharge pathways to include the 1st and 2nd settlement basins, secondary settlement basins, storm water management area, spillway to Grassy Creek, and areas immediately off the Site for purposes of establishing a baseline;

e. stabilize the Site grounds on the Site so as to prevent further contamination or migration of contamination from the property. The existing ground water well will also be sampled to establish if ground water contamination has occurred. Contractor shall perform monitoring of the well no more frequently than once per calendar quarter for the duration of the contract is in effect, and, upon written authorization from the State may monitor less frequently. Monitoring shall include gamma spectroscopy and liquid scintillation counting. Installation of new ground water monitoring wells or Site-wide soil borings or soil sampling are currently not supported by analytical data, however, the Contractor may conduct additional activities where determined necessary or advisable. If the State determines that the results of analytical data make additional work necessary, the Contractor will provide such additional activities as agreed to after meeting with the State;

f. provide positive access control to the Facility via the existing Site access gate and/or a transfer gate that shall be installed in the fence between this Site and 1560 Bear Creek Road;

g. submit a sample to an offsite laboratory for a 10 CFR Part 61 analysis of the scrubber salts. Contractor shall cover or repack the scrubber salt that is presently being washed down the outside yard drains. The repackaged scrubber salts will be stored on-site pending the start of D&D activities;

h. establish Site Controls including postings and radiological boundaries consistent with the radiation protection program approved for the site;

i. initiate the clearing of the fence line of heavy brush and provide fence line monitoring, including quarterly TLD's and monthly dose rate surveys;

j. include contamination potentially present in soil beneath the building floor and in buried yard storm drain piping in the D&D planning if dose rates measured at 1 meter above the accessible surfaces exceed 50 microrem per hour; and

k. evaluate the potential for future migration of ground water contamination (radiological and non-radiological contaminants) as a result of residual contamination found in these areas. Based on these results, the need for remediation will be discussed with the State and, if appropriate, shall be included as an addendum to the contract.

A.3. **Phase II Activities, Remediation Plan for D & D Activities**

Within ninety (90) days of the effective date of this Contract, the Contractor shall develop and submit to the State for it's evaluation and approval a detailed Remediation Plan. The Remediation Plan shall establish: 1) the extent of the D&D Activities to be performed that are not expressly spelled out in this Contract, 2) the criteria for setting D&D priorities, 3) methods for verifying that release criteria have been met by the Contractor, and 4) the procedure for resolution of unexpected situations or disputes between the State and the Contractor that should arise during the D&D Activities. D&D Activities to be covered in the Remediation Plan shall include, but not be limited to the following:

a. Measurements of radioactive material that has migrated off site around and beyond the spillway located on the back, south side of the property. (The State shall assist the contractor in securing permission to gain access to properties adjacent to the site in which contamination from the site has migrated, to conduct sampling activities);

b. Decontaminating the on site soils, including the retention pond to a level ≤ 5 pCi/g total (gamma) activity of non-naturally occurring isotopes;

c. Characterization, inventory, repackaging and final disposition of legacy waste. The State will provide all analytical results and records of the legacy waste to the Contractor in support of characterization of these materials as well as any historical data regarding the origin of the materials. The plan shall present processing and disposition options for wastes identified during characterization work. The plan shall also address cooperative efforts to be undertaken with the State to arrange for the disposal of Class B, C and GTCC wastes and provisions for onsite secure, monitored interim storage;

d. Characterization, inventory, repackaging and final disposition of Area 104 legacy waste, which includes drummed lubricant and other miscellaneous palletized drums;

e. Identification, removal, packaging, and disposal of hazardous (non-radiological) materials found at the site;

f. Characterization, removal, re-use and/or disposal of all or part of the process equipment and materials within the building;

g. Remediation of interior, non-process areas such that radiation levels in non-process areas are < 0.2 mrem/h. Removable contamination will be reduced to levels acceptable for unrestricted release under the approved radiation protection program;

h. Remediation of interior process areas so that the area dose rate is ≤ 5 mrem/h, measured at 30 cm from any exposed structure, retained equipment or components and less than 2 mrem/h as a general area measurement for fixed contamination. Removable

contamination will be reduced to levels acceptable for unrestricted release under the approved radiation protection program;

i. Equipment or areas of the building behind permanent shielded enclosures may exceed 5 mrem/h provided the levels outside the shielding are ≤ 5 mrem/h at 30 cm from the surface of the shielding. Removable contamination will be reduced to levels acceptable for unrestricted release under the approved radiation protection program;

j. Higher residual activity levels may be acceptable on a case-by-case basis as negotiated between the State and the Contractor;

k. The decontamination end points cited in Phase II activities g, h, i, and j are practical cleanup transition points from which new licensed activities may be initiated. The eventual final decommissioning of the facility will be based upon mutually agreed upon pathways analyses and derived concentration guideline levels (DCGLs).

l. Disposition the scrubber salts based on analytical results obtained in Phase I in accordance with existing licensing procedures.

m. Remediate soil beneath the building floor and in buried yard storm drain piping where dose rates measured at one meter above accessible surfaces exceed 50 microrem per hour.

Upon approval by the State, the Remediation Plan shall become part of this Contract.

A.4. **Phase III Performing D&D Activities**

a. The Contractor shall develop and implement detailed plans and procedures and work packages to carryout the D&D Activities. All D&D plans, procedures and work packages shall be developed in accordance with the facility license;

b. The Contractor is responsible for the completion of the Remediation Plan and D&D activities deemed necessary by the State; and shall carry out the activities as described in (a) above;

c. The Contractor shall perform final verification surveys of D&D operations and other areas affected by D&D operations in accordance with the approved Remediation Plan, and submit a final Decommissioning Report to the Division.

d. D & D shall not be deemed complete until the State has received and approved the final Decommissioning Report and has been provided burial certificates for all waste removed from the Site and when areas to be released from the Phase III Activities have been covered by financial assurance pursuant to the provisions of Division Rule 1200-2.

B.. CONTRACT TERM:

This Contract shall be effective for the period commencing on November 1, 2007 and ending on December 31, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed five million forty thousand dollars ($5,040,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or

any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	**Amount** (per compensable increment)
Milestone 1 — Sign Contract	$ 252,000.00
Milestone 2 — Satisfactory completion of Phase I activities described in Sections A.2.a through A.2.j	$ 1,512,000.00
Milestone 3 — Satisfactory completion of Phase I activity described in Section A.2.k AND Completion and State Approval of Phase II, Remediation Plan, described in Section A.3 through A.3.m	$ 504,000.00
Milestone 4 — Satisfactory completion of Phase III activities described in Sections A.4.a and A.4.b	$ 2,268,000.00
Milestone 5 — Satisfactory completion of Phase III activities described in Sections A.4.c. and A.4.d	$504,000.00

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

The Tennessee Department of Environment and Conservation
Division of Radiological Health
Attn: Mary Helen Short
3rd floor, L&C Annex

401 Church St.
Nashville, TN 37243

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

(1) Invoice/Reference Number (assigned by the Contractor);
(2) Invoice Date;
(3) Invoice Period (period to which all invoiced charges are applicable);
(4) Contract Number (assigned by the State to this Contract);
(5) Account Name: TDEC Division of Radiological Health;
(6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
(7) Contractor Name;
(8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
(9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
(10) Contractor Remittance Address;
(11) Complete Itemization of Charges, which shall detail the following:

i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
iv. Amount Due by Service; and
v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

(1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) not include any future work but will only be submitted for completed service; and
(3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request,

show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.

D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Roger Fenner, Health Physicist Consultant
TN Department of Environment and Consultation
Division of Radiological Health
401 Church Street, 3rd floor L&C Annex
roger.fenner@state.tn.us
Telephone # 615-532-0404
FAX # 615-532-7938

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON
CONTRACTOR NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER
FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

DRAFT

IN WITNESS WHEREOF:

ENERGYSOLUTIONS, LLC:

CONTRACTOR SIGNATURE DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

JAMES H. FYKE, COMMISSIONER DATE

APPROVED:

M. D. GOETZ, JR., COMMISSIONER DATE
DEPARTMENT OF FINANCE AND ADMINISTRATION

DEBORAH E. STORY, COMMISSIONER DATE
DEPARTMENT OF HUMAN RESOURCES

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

ATTACHMENT ONE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE: _____

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	**DIVISION OF RADIOLOGICAL HEALTH**
	)	
	)	
ENERGYSOLUTIONS, LLC	)	**CASE NO.**
	)	
	)	
	)	

BROWNFIELD CONSENT ORDER

This Consent Order ("Order") is made and entered into by and between the Tennessee Department of Environment and Conservation (hereinafter "Department" or "TDEC") and EnergySolutions, LLC ("EnergySolutions" or "Consenting Party").

1. PARTIES

1.1 James H. Fyke is the duly appointed Commissioner of the Department ("Commissioner"). Lawrence E. Nanney has been delegated the authority to enter into Consent Orders administered through the Department's Division of Radiological Health ("DRH").

1.2 EnergySolutions is a limited liability company authorized to do business in the State of Tennessee.

2. JURISDICTION

2.1 Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into a Consent Order with a party who is willing and able to conduct an investigation and remediation of a hazardous substance site or "Brownfield Project" as defined in Tennessee Code Annotated § 68-212-202(1).

2.2 The Brownfield Project addressed by this Order is for a site contaminated by low-level radioactive waste and other pollutants. The project shall include, but not be limited to, site surveillance, historical site assessment, investigation, removal, recycle, decontamination and

remediation to an agreed end point criteria ("EPC") at the Site. Work initiated or completed pursuant to the Brownfield Project shall be known as the "Activities."

2.3 The parties agree that this Consent Order complies in full with all requirements of TENN. CODE ANN. § 68-212-224

3. FACTS

3.1 ATG, Inc., or one of its subsidiaries (sometimes collectively referred to herein ("ATG") owned and operated the Bear Creek Road Facility in Oak Ridge, Tennessee ("Site" or "Facility"). The Site consists of approximately 6.3 acres. It includes a building, parking areas and is enclosed by a chain link fence. TDEC issued a license to ATG for the operation of a low-level radioactive waste handling facility at the Site on December 7, 1998.

3.2 On December 3, 2001, ATG, Inc. filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court"). On February 11, 2002, the Bankruptcy Court entered an order approving the appointment of Robert I. Hanfling ("Hanfling" or the "Trustee") as Chapter 11 Trustee for ATG. On June 12, 2002, pursuant to the authority vested in him under the Bankruptcy Code, the Trustee filed voluntary petitions under Chapter 11 for each of ATG's three wholly owned subsidiaries: ATG Catalytics, LLC; ATG Richland Corp.; and ATG Nuclear Services, LLC. On April 27, 2004, the Bankruptcy Court entered an order converting ATG's bankruptcy cases to cases under Chapter 7 of the Bankruptcy Code and Mr. Hanfling was selected to serve as the Chapter 7 Trustee for ATG and its subsidiaries.

On November 12, 2004, the Trustee filed a motion with the Bankruptcy Court ("Trustee's Motion") seeking entry of an order pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code authorizing the Trustee to sell all assets related to the ownership and operation of the

Facility ("Assets") free and clear of all liens, claims, interests and encumbrances, as set forth in an asset purchase agreement annexed to the Trustee's Motion. Thereafter, on January 5, 2005, the Bankruptcy Court entered an order authorizing the Trustee to sell the Assets in accordance with the terms of the asset purchase agreement annexed to the Trustee's motion.

On [date], the Trustee, on behalf of ATG and its subsidiaries, entered into an asset purchase agreement (the "Bear Creek APA") with EnergySolutions for the sale of the Site and Assets. The Bear Creek APA is identical in all material respects to the asset purchase agreement approved by the Bankruptcy Court in its order of January 5, 2005. The Trustee stated that no further order of the Bankruptcy Court is required in order for the Trustee to enter into the Bear Creek APA and transfer legal ownership of the Assets (including the Facility) to EnergySolutions.

Pursuant to the Bear Creek APA, EnergySolutions has agreed to accept title to the Assets, including the Facility, subject to certain terms and conditions. Among such conditions is that EnergySolutions obtain all authorizations, consents, and approvals of all existing government authorities having jurisdiction over the Assets required to permit EnergySolutions to consummate the transaction contemplated in the Bear Creek APA. This Order shall not become effective until and unless EnergySolutions becomes the legal owner of the Facility. In this regard, the Bear Creek APA and this Order are contingent upon each other.

3.3 The Facility is radioactively contaminated, particularly in the interior portion of the building, and in certain discrete areas outside the building. The public health and environment are at risk if the facility is abandoned or left unsecured to public access. The building(s) both interior and exterior surfaces, abandoned process equipment, materials and wastes on the Site must be characterized, decontaminated if appropriate, salvaged, and/or

packaged and disposed in order to render the facility suitable for commercial and industrial activity. These decommissioning and disposal activities will hereinafter be referred to as "D & D".

3.4 As required by TCA. § 68-212-224, a summary description of all known and available environmental investigations, studies, reports, or documents concerning the Site's environmental condition has been submitted to the Department by the Consenting Party. As of the effective date of this Order, the Site is not listed or proposed for listing on the federal National Priorities List.

3.5 The Commissioner finds that EnergySolutions is able to carry out the activities required by the Order.

3.6 On _____, 2007, the Department received authorization to enter into a non-competitive contract with EnergySolutions to carry out the requirements set forth in this Consent Order.

4. IDENTIFICATION AND DOCUMENTATION OF CLEANUP

4.1 The Facility was used for the packaging, handling and processing of low-level radioactive waste from nuclear utilities, the U.S. Department of Energy and U.S. Military Installations. Structures located at the Site include a process building, outbuilding housing the HEPA banks, the H2S scrubber and the thermal oxidizer, and a guard hut. The areas surrounding the front and sides of the building are paved parking areas. Storm water runoff is directed via a common discharge pipe to a retention pond behind the facility and to Grassy Creek via an outfall structure. The Site is completely enclosed with a chain link fence. The presence of radioactive contamination and the radiation dose rates at the Site's fence line, in the retention basin, and within the Facility are recognized environmental conditions.

4.2 The Department files located at the Division of Radiological Health, Nashville, Tennessee, contain extensive documentation regarding the Site, including without limitation, radiation levels at the Site. All information contained in the referenced reports and Department files is incorporated into the summary contained herein, and is thereby included within this Order.

5. AGREED ACTIONS TO BE TAKEN

5.1 The Consenting Party agrees to submit any additional relevant environmental investigations, studies, reports, or documents concerning the Site's environmental condition that are generated by Energy Solutions during the effective time of this Order or that come into its possession to the Department. The Consenting Party agrees to comply with the obligations created by the terms of this Order.

5.2 It is the intention of EnergySolutions to apply for a new Tennessee Radioactive Materials License for the Site, including incorporation of the current EnergySolutions Bear Creek Site Radiation Protection Program.

5.3 For clarity, Site activities have been listed in a phased approach with immediate actions covered under Phase I and Phase II and longer Remediation/D&D activities in Phase III. Phase I and II Activities can be performed sequentially or in parallel.

5.4 **Phase I Activities.**

(a) Immediately upon the effective date of this order, Consenting Party shall initiate Caretaker Services for the Facility. "Caretaker Services" shall include, but are not limited to the following: (1) stabilizing building structures on the Site, (2) re-establishing and maintaining required utilities in buildings including the facility HEPA ventilation

system (if the ventilation system is operated as indicated in (c), and (3) maintaining the integrity of the fencing on the property.

(b) No later than 30 days from the effective date of this Order , EnergySolutions shall be responsible for providing Site Security Services. "Security Services" shall include measures to ensure that unauthorized access to the Site does not occur and unauthorized removal of radioactively contaminated equipment does not occur.

(c) As soon as commercially feasible, but no later than 30 days from the effective date of this Order, EnergySolutions shall initiate a Site characterization of the radiation contamination situation for the entire Site. This characterization shall establish the exposure rates around the site, the amount of removable and fixed contamination (gross alpha, beta and gamma) on site surfaces, both internal and external, the concentration of radioactity (gross alpha, beta and gamma) in the environment external to the buildings including storm water drains, discharge pathways to include the 1st and 2nd settlement basins, secondary settlement basins, storm water management area, spillway to Grassy Creek, and areas immediately off the Site for purposes of establishing a baseline.

(d) No later than 30 days from the effective date of this Order, EnergySolutions shall stabilize the Site grounds on the Site so as to prevent further contamination or migration of contamination from the property. The existing ground water well will also be sampled to establish if ground water contamination has occurred. The Consenting Party shall perform monitoring of the well no more frequently than once per calendar quarter for the duration of the Order, and upon written authorization from the Department may monitor less frequently. Monitoring shall include gamma spectroscopy and liquid scintillation counting. Installation of new ground water

monitoring wells or Site-wide soil borings or soil sampling are currently not supported by analytical data; however, the Consenting Party may conduct additional activities where determined necessary or advisable. If the Department determines that the results of analytical data make additional work necessary, the Consenting Party will provide such additional activities as agreed to after meeting with the Department.

(e) No later than 30 days from the effective date of this Order, EnergySolutions shall provide positive access control to the Facility via the existing Site access gate and/or a transfer gate that shall be installed in the fence between this Site and 1560 Bear Creek Road.

(f) As soon as practical following the effective date of this Order, EnergySolutions shall submit a sample to an offsite laboratory for a 10 CFR Part 61 analysis of the scrubber salts. Within 30 days of the effective date of this Order, EnergySolutions shall cover or repack the scrubber salt that is presently being washed down the outside yard drains. The repackaged scrubber salts will be stored on-site pending the start of D & D activities.

(g) No later than 30 days from the effective date of this Order, EnergySolutions shall establish Site Controls including postings and radiological boundaries consistent with the Radiation Protection Program approved for the Site.

(h) No later than 30 days from the effective date of this Order, Consenting Party shall initiate the clearing of the fence line of heavy brush and provide fence line monitoring, including quarterly TLD's and monthly dose rate surveys.

(i) As soon as practical following the effective date of this Order , evaluate contamination potentially present in soil beneath the building floor and in buried yard storm drain piping.

(j) As soon as practical following the effective date of this Order, Energy Solutions shall evaluate the potential for future migration of ground water contamination (radiological and non-radiological contaminants) as a result of residual contamination found in these areas. Based on these results the need for remediation will be discussed with the Department and if appropriate shall be included in the D &D contract:

5.5 Phase II Remediation Plan for Decontamination and Decommissioning ("D&D") Activities.

Within ninety (90) days of the effective date of this Order the Consenting Party shall develop and submit to TDEC for it's evaluation and approval a detailed Remediation Plan. The Remediation Plan shall establish: 1) the extent of the D&D Activities to be performed that are not expressly spelled out in this Order, 2) the criteria for setting D&D priorities, 3) methods for verifying that release criteria have been met by the Consenting Party, and 4) the procedure for resolution of unexpected situations or disputes between TDEC and the Consenting Party that should arise during the D&D Activities. D&D Activities to be covered in the Remediation Plan shall include, but not be limited to the following:

(a) Measurements of radioactive material that has migrated off site around and beyond the spillway located on the back, south side of the property (The Department shall assist the Consenting Party in securing permission to gain access to properties adjacent to the site in which contamination from the site has migrated, to conduct sampling activities);

(b) Decontaminating the on site soils, including the retention pond to a level ≤ 5 pCi/g total (gamma) activity of non-naturally occurring isotopes;

(c) Characterization, inventory, repackaging and final disposition of legacy waste. The Department will provide all analytical results and records of the legacy waste to the Consenting Party in support of characterization of these materials as well as any historical data regarding the origin of the materials. The plan shall present processing and disposition options for wastes identified during characterization work. The plan shall also address cooperative efforts to be undertaken with the Department to arrange for the disposal of Class B, C and GTCC wastes and provisions for onsite secure, monitored interim storage.

(d) Characterization, inventory, repackaging and final disposition of area 104 legacy waste, which includes drummed lubricant and other miscellaneous palletized drums;

(e) Identification, removal, packaging, and disposal of hazardous (non-radiological) materials found at the site;

(f) Characterization, removal, re-use and/or disposal of all or part of the process equipment and materials within the building;

(g) Remediation of interior, non-process areas such that radiation levels in non-process areas are < 0.2 mrem/h. Removable contamination will be reduced to levels acceptable for unrestricted release under the approved Radiation Protection Program;

(h) Remediation of interior process areas so that the area dose rate is ≤ 5 mrem/h, measured at 30 cm from any exposed structure, retained equipment or components and less than 2 mrem/h as a general area measurement for fixed

contamination. Removable contamination will be reduced to levels acceptable for unrestricted release under the approved Radiation Protection Program;

(i) Equipment or areas of the building behind permanent shielded enclosures may exceed 5 mrem/h provided the levels outside the shielding are ≤ 5 mrem/h at 30 cm from the surface of the shielding. Removable contamination levels will be reduced to levels acceptable for unrestricted release under the approved Radiation Protection Program;

(j) Higher residual activity levels may be acceptable on a case-by-case basis as negotiated between the Department and the Consenting Party;

(k) The decontamination end points cited in 5.6 (g), (h), (i), and (j) are practical cleanup transition points from which new licensed activities may be initiated. The eventual final decommissioning of the facility will be based upon mutually agreed upon pathways analyses and derived concentration guideline levels (DCGLs)

(l) Disposition the scrubber salts based on analytical results obtained in Phase I in accordance with existing licensing procedures.

(m) Remediate soil beneath the building floor and in buried yard storm drain piping where dose rates measured at 1 meter above the accessible surfaces exceed 50 microrem per hour.

Upon approval by the Department the Activities shall be incorporated into the non-competitive contract.

5.6 <u>Financial Assurance</u>.

(a) The total amount of financial assurance designated for the D&D of this site shall be FIVE MILLION FORTY THOUSAND DOLLARS (5,040,000.00) The

financial assurance consists of funding from approximately Four Million Eight Hundred Thousand Dollars ($4,800,000) collected financial assurance from ATG and Two Hundred Forty Thousand Dollars ($240,000) paid by EnergySolutions as restitution pursuant to a plea agreement between Duratek Federal Services and the United States government and approved by the United States District Court for the Eastern District of Tennessee, December 28, 2006.

(b) The financial assurance is maintained in an account under the control of TDEC. Such account is maintained and accounted for such that the principal and interest does not revert to the State general fund, but is maintained and shall be expended by the Department solely for the D&D of the Facility. Such account designates a portion of its funds from the financial assurance as "for the ATG" Site. The maximum amount that TDEC will pay for all D& D activities covered in this Consent Order, shall not exceed the monies available from the referenced financial assurance. D & D shall not be deemed complete until objectives specified in the Consent Order have been accepted as completed by TDEC or when areas to be released from the D & D phase have been covered by financial assurance pursuant to the provisions of Division Rule 1200-2.

5.7 Phase III Performing D&D and Work Activities

The Department has received authorization to enter into a non-competitive contract with EnergySolutions for the performance of the D & D and other Work Activities required in this Consent Order. EnergySolutions will develop and implement detailed plans and procedures and work packages to carryout the D&D Activities outlined in the approved D&D Contract. All

D&D plans, procedures and work packages shall be developed in accordance with the facility license. The D&D Contract shall clearly specify:

(a) That the maximum amount that TDEC shall pay for all D&D Activities, including all Phase I and II work, shall not exceed the monies available from the above referenced financial assurance;

(b) The Consenting Party is responsible for the completion of the Remediation Plan and D&D activities deemed necessary by TDEC;

(c) The Contractor shall perform final verification surveys of D&D operations and other areas affected by D&D operations in accordance with the approved Remediation Plan, and submit a final Decommissioning report to TDEC.

(d) D & D shall not be deemed complete until TDEC has received and approved the final Decommissioning report and been provided burial certificates for all waste removed from the Site and when areas to be released from the Phase III Activities have been covered by financial assurance pursuant to the provisions of Division Rule 1200-2.

5.8 Agreed Liability Relief.

Following the completion of activities required under this Order and contingent upon the continued adherence and enforcement of any identified land use restrictions, the Consenting Party shall bear no further liability under any statute administered by the Department, for investigation, remediation, monitoring and/or maintenance of contamination (radiological and non-radiological) identified and addressed in this Order. However, the Department reserves the right to require additional action for contamination caused by the Consenting Party occurring

after the date that the Consenting Party acquires the property on which the Facility is located. This liability protection is extended to successors in interest or in title, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the obligations contained in this Order and compliance with any land use restrictions required thereby; provided, that such liability protection to other persons does not apply to any liability that arose prior to this Order.

5.9 Third Party Liability Relief

The Consenting Party shall not be liable to third parties for contribution regarding matters addressed in this Order provided that the third party was given actual or constructive notice of this Order, and the third party has been given an actual or constructive opportunity to comment upon this Order. As provided in Section 10, below, the Consenting Party shall publish Public Notice of this Order. Nothing in this Order shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by this Order.

6. LAND USE RESTRICTIONS AND ZONING

Upon acquiring the Assets, EnergySolutions agrees that the Facility shall be restricted to commercial and industrial use. The sale of the site without the prior written approval of the Department shall be prohibited, and the recordation of any other land use restriction deemed necessary by the Department for protection of the public health and safety. EnergySolutions agrees that it shall file all land use restrictions in accordance with T.C.A. § 68-212-225 and file a copy of the recorded land use restrictions with the Department within thirty (30) days of recording the land use restrictions. EnergySolutions agrees to notify all local governments having jurisdiction over any part of the Site of any land use restriction in accordance with T.C.A.

§ 68-212-225. In addition, the Consenting Party and the Consenting Party's successors and/or assigns shall comply with all zoning restrictions for the Site.

7. FINANCIAL REQUIREMENTS

7.1 The Department agrees to waive all costs associated with the assistance and oversight associated with the implementation of this Order until such time as both parties agree that all established end point criteria has been met.

7.2 Tennessee Code Annotated § 68-212-224 requires consideration of a fee to enroll in the Voluntary Cleanup Oversight and Assistance Program. Since redeveloping an under-utilized property serves the public welfare, the participation fee for EnergySolutions is hereby waived.

7.3 ADDITIONAL REQUIREMENTS

EnergySolutions may request a time extension for any deadline included in this Order prior to the deadline. TDEC may grant time extensions for good cause shown. Extensions shall not be unreasonably withheld. EnergySolutions agrees not to disturb, move, or remove any areas of hazardous substances, solid waste or other pollutant(s) that are subject to liability protection under this Order without written approval by the Department, unless the activities are being conducted under the terms and conditions of this Order.

8. SITE ACCESS

During the effective period of this Order, and until certification by the termination of this Order, the Department and its representatives, contractors or designees shall have access to the Site during normal business hours. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation, or permit. The Department and its representative shall comply with all reasonable health and safety plans

published by the Consenting Party and used by Site personnel for the purpose of protecting life and property.

9. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

Any information, reports, or studies submitted under the terms of this Order shall contain the following statement:

> I certify under penalty of law, including but not limited to penalties for perjury, that the information contained in this document and on any attachment is true, accurate and complete to the best of my knowledge, information and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violation.

10. NOTICE

EnergySolutions shall provide notice to the public, all owners of adjoining properties and local governments having jurisdiction over any part of the subject property ("Public Notice"). EnergySolutions may accomplish Public Notice to adjoining landowners and governments by certified mail, pursuant to T.C.A. § 68-212-224(h). In addition, EnergySolutions shall publish the Public Notice, attached hereto as Exhibit B, in the *Oak Ridger*, a newspaper of general circulation, at least forty-five (45) days prior to the effective date of this Order. TDEC will accept written comments from persons concerning this proposed Order for thirty (30) days following publication of the Public Notice. Within fifteen (15) days after the close of the comment period, TDEC and EnergySolutions will review any comments received during the comment period. TDEC and EnergySolutions reserve the right to mutually modify or amend this Order in response to any comments that may be received during the comment period.

11. EFFECTIVE DATE

This Order, as it exists after any mutually agreed upon modifications or amendments made in response to comments, shall be effective forty-five (45) days after publication of the

Public Notice; provided that, the Consenting Party is the legal owner of the subject property at that time and has a license from the Department authorizing the performance of these Activities at the site. Otherwise, this Order shall become effective the day that the Consenting Party becomes the legal owner of the subject property and has received a license from the Department authorizing the performance of these Activities at the site.

[Signature Page follows]

The individual signing below on behalf of the Consenting Party represents that he is a duly authorized agent, capable of entering into a Consent Order on behalf of the Consenting Party.

Consenting Party indicates its willingness to carry out this Consent Order by its signature below:

STATE OF TENNESSEE		ENERGYSOLUTIONS, LLC
_____	_____	_____
Date	Lawrence E. Nanney Director Division of Radiological Health	Date By: _____ Title: Principal Manager