

R.T. NAHAS COMPANY *Since 1947*

REAL ESTATE DEVELOPERS AND INVESTORS

20630 PATIO DRIVE
CASTRO VALLEY, CALIFORNIA 94546
TELEPHONE (510) 538-9600
FAX (510) 881-7618

July 7, 1995

Mr. Scott Seery
Hazardous Materials
Alameda County Health Care Services
1131 Harbor Bay Parkway, Room 250
Oakland, CA 94502-6577

Dear Scott:

Enclosed is a copy of the agreement to prepare a corrective action plan for the Unocal Station. It has taken us longer than we anticipated to get our approval from the State. Therefore, I don't believe we can meet the July 12th deadline. I would appreciate it if we could put that date back whatever period of time you believe will allow us to perform this study.

I appreciate your help in this matter.

Sincerely,


Randall E. Nahas

REN/hrs

Enclosure

95 JUL 21 10 11 AM '95

Agreement of Environmental Consulting Services

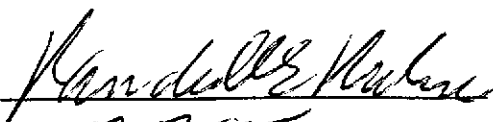

THIS AGREEMENT, effective as of this 5th day of July, 1995, is by and between, R.T. Nahas Company, hereinafter referred to as "Client", and, BSK & Associates, Geotechnical Consultants, Inc., hereinafter referred to as "Consultant." Consultant agrees to perform the Services set forth in this Agreement in accordance with its terms.

THE PROJECT, is generally described as: Feasibility Study and Corrective Action Plan Preparation, Tien's Unocal Station, and is located at 20405 Redwood Road, Castro Vally, California (Project Site).

THIS AGREEMENT, consists of the following documents which are incorporated herein by reference:

- Scope of Work;*
- Schedule of Charges;*
- General Conditions for Environmental Consulting Services; and
- Such other documents specifically listed below, or incorporated by reference in the listed documents.

This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties, and any negotiations, proposals or oral agreements are intended to be integrated herein and to be superseded by this Agreement. This Agreement may not be modified or altered, except by an Agreement in writing and signed by authorized representatives of both parties hereto, which specifically refers to this Agreement.

	Client	Consultant
Party:	R.T. Nahas Company	BSK & Associates
By:		Alex Y. Eskandari, Manager Professional Services Group
Title		
Signature:		
Date:	<u>7-7-95</u>	<u>July 6, 1995</u>



1181 Quarry Lane
Building 300
Pleasanton, CA 94566
(510) 462-4000
(510) 462-6283 FAX

June 22, 1995

BSK PROPOSAL NO. 04-40-0027

Mr. Randall E. Nahas
R.T. Nahas Company
20630 Patio Drive
Castro Valley, California 94546

Subject: Revised Proposal - Feasibility Study
And Corrective Action Plan Preparation
Tien's Unocal Station
20405 Redwood Road
Castro Valley, California

Dear Mr. Nahas:

BSK & Associates, Inc. (BSK) is pleased to present this proposal for a Feasibility Study and preparation of a Corrective Action Plan for the Unocal Station located at 20405 Redwood Road in Castro Valley, California. As required by the Alameda County Environmental Protection Division (ACEPD) in their letter of April 13, 1995, the Feasibility Study and Corrective Action Plan would be prepared in accordance with Article 11 (Corrective Action Requirements), Title 23, California Code of Regulations.

The purpose of our proposed services would be to evaluate the feasibility and suitability of corrective action alternatives based on our assessment of the impacts, the characteristics of the contaminant, and the hydrogeological conditions at the site. Using the findings of the feasibility study, a Corrective Action Plan would be formulated.

SCOPE

Our scope of services would include the following tasks:

1) *Preparation of a Workplan*

A Workplan would be prepared for an aquifer pump test. The Workplan would include:

- Proposed extraction well and observation well locations
- Methodology for the pump test including effluent treatment and disposal

2) *Field Investigation*

Permitting and Coordination Services

- Notify Underground Services Alert a minimum of 48 hours prior to drilling
- Obtain Boring, Monitoring Well and Encroachment Permits

Groundwater Extraction Well Construction

- Advance 1 boring to a maximum depth of 30 feet, or 10 feet into first groundwater, whichever is shallower. The boring would be advanced using a truck-mounted drill rig and 10-inch outside diameter, hollow-stem auger.
- Sample soil at 5-foot intervals, commencing at a depth of 10 feet below grade. Sampling would be attempted using a California Modified, split-barrel sampling device.
- Submit 2 soil samples for laboratory analyses. Analyses would include EPA Method 8015 modified for Total Petroleum Hydrocarbons as Gasoline (TPH-G), and EPA Method 8020 for Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX).
- Store drill spoils in 55-gallon drums at an on-site location specified by the owner.
- Construct a 4-inch diameter, PVC extraction well in the boring.
- Develop, purge and sample the extraction well. Development and purge water would be stored in 55-gallon drums at a location specified by the client.
- Analyze one water sample for TPH-G and BTEX.
- Perform a survey to tie new well into the existing well survey. The survey would establish vertical and horizontal control.

Pump Test

- Install a submersible pump in the extraction well and provide a water treatment unit and holding tank for pump-test effluent. Existing monitoring wells would be used for observation wells during the pump test.
- Conduct a four hour step-drawdown test. One sample of effluent water would be obtained from the holding tank to ascertain the effectiveness of the treatment unit. Effluent tests, consisting of analyses for TPH-G, and BTEX, would be conducted on a 24-hour turnaround basis.
- Conduct a constant rate pump test for 48 hours or until breakthrough of the second carbon stage occurs. Effluent for the 48-hour test would be discharged to the existing sewer system under permit. If sewer discharge is disallowed, effluent would be stored in a large capacity tank until an alternate treatment and disposal destination can be secured. Results of testing during the four hour step-drawdown test would be used to obtain a sewer discharge permit or identify an alternate waste handling plan, as appropriate.

3) *Feasibility Study*

Subsequent to the performance of field studies, an evaluation would be made of appropriate corrective action techniques for soil and groundwater including, but not necessarily limited to, source control with ongoing monitoring; vapor extraction with carbon, thermal or other appropriate treatment; groundwater pump and treat; in-situ bio-treatment; excavation and treatment or disposal; or combinations thereof. The evaluation would include an analysis of costs (both initial and maintenance/monitoring), effectiveness including anticipated time and extent of clean-up, and impacts to the operation of the facility during clean-up efforts.

4) *Feasibility Study Report*

BSK would prepare a report detailing the site background, methods and findings of field studies, and the evaluation of interim remedial alternatives. The report would include cost estimates, estimates of effectiveness of each alternative, and anticipated disturbance of the site operations.

5) *Corrective Action Plan Preparation*

BSK would prepare a Corrective Action Plan (CAP) for the site, after consultation with R.T. Nahas Company and the appropriate regulatory agencies. The CAP would present a remediation approach for the site, as well as a system design including well and treatment system locations, operation and maintenance plans, and monitoring plans.

PROJECT SCHEDULE

BSK would begin work on the Workplan and permitting activities within five working days of receipt of written authorization to proceed. We anticipate that the Workplan would be submitted to R.T. Nahas Company within 20 working days of notice to proceed. Drilling and field operations would be scheduled on approval of the Workplan and permit applications. We anticipate that the field operations would be completed within 25 working days following approval of the permits.

FEES

BSK would perform the scope of services in Tasks 1 through 5 on a time and materials basis for an estimated fee of \$22,500. We would not exceed the estimated fee without prior written approval. Attachment 1 presents a breakdown of our estimated fees.

GENERAL CONDITIONS

The written agreement between BSK & Associates and the client would consist of this proposal and BSK's Terms for Agreement. BSK would forward a copy of our Terms for Agreement on selection of BSK as your consultant. This Proposal for professional services shall be valid for not more than sixty (60) days from the date of presentation.

If the above proposed scope of services and fee are acceptable, please notify us so that our Terms and Conditions can be sent to you. We appreciate the opportunity to submit this proposal. Should you have questions regarding this submittal, or if we can be of additional service, please do not hesitate to contact us.

Respectfully submitted,
BSK & Associates



Richard E. Johnson, C.E.G.
Manager, Environmental Services



Alex Y. Eskandari, P.E.
Manager, Professional Services Group

REJ/AYE:kf\hc
(PROENV04400027.J22)

Attachment:
Estimate of Fees

ATTACHMENT 1
Estimate of Fees
Feasibility Study and
Corrective Action Plan Preparation
BSK Proposal No. 04-40-0027

1) Workplan Preparation		
Staff Professional	8 hrs @ 74/hr	
		\$ 592
		Total 1 \$ 592
2) Field Investigations		
Permitting		
Staff Professional	4 hrs @ 74/hr	\$ 296
Permits	Lump Sum	300
Extraction Well Construction		
Drill Rig & Crew	6 hrs @ 140/hr	840
Staff Professional	6 hrs @ 74/hr	444
Senior Professional	2 hrs @ 98/hr	196
Equipment	Lump Sum	300
Materials	Lump Sum	1,000
Develop and Sample		
Senior Technician	4 hrs @ 58/hr	232
Equipment	Lump Sum	250
Analytical Chemistry		
2 Soil, 1 Water - TPHG & BTEX	3 test @ 60/ea	180
Pump Test		
Project Professional	16 hrs @ 88/hr	1,408
Staff Professional	8 hrs @ 74/hr	592
Technician II	30 hrs @ 52/hr	1,560
Equipment	Lump Sum	6,100
Analytical Chemistry	2 test @ 120/ea	240
Data Reduction		
Project Professional	16 hrs @ 88/hr	1,498
Senior Professional	6 hrs @ 98/hr	588
		Total 2 \$ 15,934
3) FS & FS Report		
Project Professional	25 hrs @ 88/hr	\$ 2,200
Senior Professional	8 hrs @ 98/hr	784
Drafting	10 hrs @ 42/hr	420
		Total 3 \$ 3,404
4) C.A.P. Preparation		
Project Professional	20 hrs @ 74/hr	\$ 1,480
Senior Professional	6 hrs @ 98/hr	588
Principal	2 hrs @ 118/hr	236
Drafting & Clerical	Lump Sum	250
		Total 4 \$ 2,554
ESTIMATED PROJECT TOTAL		\$ 22,484
SAY		\$ 22,500

* Based on effluent disposal to the public sewer. Does not include alternate treatment or disposal methods.



General Conditions for Environmental Consulting Services

1. Definitions

- 1.1 **Contract Documents:** Plans, specifications, and agreements between Client and Contractors, including addenda, amendments, supplementary instructions, and change orders.
- 1.2 **Day(s):** All days are calendar days unless otherwise stated.
- 1.3 **Hazardous Materials:** The term Hazardous Materials shall mean any toxic substances, chemicals, pollutants or other materials, in whatever form or state, including, but not limited to smoke, vapors, soot, fumes, acids, alkalis, minerals, toxic chemicals, liquids, gasses or any other material, irritant, contaminant or pollutant, that is known or suspected to adversely affect the health and safety of humans or of animal or plant organisms, or which are known or suspected to impair the environment in any way whatsoever and shall include, but not be limited to, those substances defined, designated or listed in Section 4004 of the Solid Waste Disposal Act (42 USC § 6903); Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601(14)); as listed or designated under Sections 1317 and 1321(b)(2)(a) of the Title 33 (33 USC §§ 1317 and 1321 (b)(2)(a) or as defined, designated or listed under any other federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances or pollution.
- 1.4 **Governmental Agencies:** All federal, state and local agencies having jurisdiction over the Project.
- 1.5 **Laws and Regulations:** Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction over the project.
- 1.6 **Performance Specifications:** Written criteria that define the minimum standards to be achieved by portions of the work designed and constructed, manufactured, or installed by the Contractor.
- 1.7 **Services:** The professional services provided by Consultant as set forth in this Agreement, the Scope of Work and any written amendment to this Agreement.
- 1.8 **Work:** The labor, materials, equipment and services required to complete the work described in the Contract Documents.

2. Scope of Work

Consultant shall perform the services and tests outlined in the attached Scope of Work, which may be amended by Client and Consultant in writing. If Consultant provides Client with a writing confirming the change in scope, it shall become an amendment to this Agreement unless Client objects in writing within five (5) working days after receipt. All work performed by Consultant at the Project is subject to the terms and limitations of this Agreement. If work is performed, but the parties do not reach agreement concerning modifications to the scope of work or compensation, then the terms and limitations of this Agreement apply to such work, except for the payment terms. Disputes concerning modifications to scope, or compensation, shall be resolved pursuant to Section 20, "Disputes".

3. Payments to Consultant

3.1 Time and Materials

All work performed under this Agreement shall be on a time and materials basis unless otherwise specifically agreed to in writing by both parties. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the work will be completed for that amount; rather, it indicates that Consultant shall not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so.

3.2 Rates

Consultant shall be paid as set forth in the Scope of Work and at the rates set forth in the Schedule of Charges. Client and Consultant agree that the Schedule of Charges shall be subject to review from time to time and amended as appropriate to reflect Consultant's then current fee structure. Consultant shall provide Client at least thirty (30) days advance notice of any changes. Unless Client objects, in writing, to the proposed amended fee structure within thirty (30) days of notification, the amended fee structure shall be incorporated into this Agreement and shall supersede any prior fee structure. If Client timely objects to the amended fee structure, and Consultant and Client cannot agree upon a new fee structure within thirty (30) days after notice, Consultant may terminate this Agreement and be compensated as set forth under Termination.

3.3 Late Payment Charge

All invoices are due on receipt. If Client fails to make any payment due Consultant for services and expenses within thirty (30) days after receipt of Consultant's invoices, the amounts due Consultant shall, thereafter, include a late payment charge at the rate of 1 1/2% per month, or the highest rate permitted by law, from the thirtieth day.

4. Standard of Performance; Disclaimer of Warranties

4.1 Professional Standards

Client acknowledges that whenever a Project involves hazardous or toxic materials and/or investigations of chemicals in the environment, there are inherent uncertainties involved (such as limitations on laboratory analytical methods, variations in subsurface conditions and the like) which may adversely affect the results of the Project, even though the Services are performed with skill and care. Consultant shall endeavor to perform the Services consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the same time the Services are performed. No other representation, warranty or guaranty, express or implied, is included or intended by this Agreement.

4.2 Evolving Technologies

The investigation, characterization and remediation of hazardous wastes involve technologies which are rapidly evolving. Existing state of the art technologies are often new and untried; future technologies may supersede current techniques. In addition, standards for remediation, including statutes and regulations, change with time. Client understands that Consultant's recommendations must be based upon current technologies and standards and may differ from the recommendations that might be made at a later time.

4.3 Levels of Service

Consultant offers different levels of environmental consulting services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive services yield more information and reduce the probability of error, but at increased cost. Client must determine the level of service adequate for its purposes. Client warrants that it has reviewed the Scope of Work and has determined that it does not need or want a greater level of service than that being provided.

5. Cost Estimates

5.1 Consultant's Estimate of Fees

Consultant will, to the best of his ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by Consultant. Client recognizes that the estimated costs are based on Consultant's best experience and judgment and that successful completion of Services within the estimated cost can be influenced by changes in workscope and schedule as needed by Client and by presently unforeseen circumstances. If the costs are expected to exceed this estimate, Consultant will notify Client and obtain Client's written approval prior to proceeding.

5.2 *Consultant's Estimate of Remediation Costs*

Client acknowledges that environmental remediation costs are subject to many influences that are not subject to precise forecasting and are outside of Consultant's control. Client further acknowledges that actual costs incurred may vary substantially from the estimates prepared by Consultant and that Consultant does not warrant or guaranty the accuracy of environmental remediation cost estimates.

6. Consultant's Responsibilities

6.1 *Phased Services*

Environmental Consulting services are provided in phases with the actual services contracted for detailed in the Scope of Work. The contracted services are provided in accordance with the terms and conditions set forth below.

6.2 *Investigative Services*

6.2.1 Investigative services may consist of Preliminary Site Assessments, Site Characterizations and Risk Investigations and Feasibility Studies. The precise services to be rendered are listed in the Scope of Work. Investigative services are based on statistical samplings and inferences from limited data and may not provide a complete or accurate characterization of the conditions existing at the Project Site. Consultant shall use prudent professional judgment in making inferences from statistical and limited data, but does not warrant or guaranty the conclusions reached.

6.2.2 Industry associations and trade groups have published differing, and sometimes conflicting, guidelines for the preparation of site assessments. In many instances, these guidelines provide a level of investigation which differs from current practice and the Scope of Work negotiated with Client. Unless otherwise specifically stated in writing, the Investigative Services will not be performed in accordance with written or published guidelines, but in accordance with the tasks listed in the Scope of Work.

6.3 *Design Services*

6.3.1 Consultant shall prepare plans and technical specifications in sufficient detail to permit the Work to be completed by competent contractors engaged in the remediation of hazardous waste sites. The designs and specifications shall be prepared in accordance with the customs and practices of competent consultants engaged in the remediation of hazardous waste sites, but Consultant does not warrant or guarantee the Work.

6.3.2 Where portions of the Work contain elements to be designed and constructed by remediation contractors (design-build elements), Consultant shall prepare Performance Specifications for such elements and shall review the plans and specifications prepared by the design-build contractors to determine whether the proposed design-build elements are consistent with Consultant's design intent. Consultant may rely upon professional certifications received from such design-build contractors without checking the accuracy of the consulting certified.

6.3.3 Consultant shall prepare all submissions necessary to receive governmental approval for commencement of remediation, but shall not be responsible for the cost of any fees or permits.

6.4 *Bidding Services*

6.4.1 Consultant shall assist Client in obtaining bids from contractors, or in negotiating agreements with contractors for the performance of all or a portion of the Work. Consultant shall incorporate General Conditions prepared by Client into the Technical Specifications prepared by Consultant. Consultant shall provide copies of plans and specifications to interested contractors at their expense and shall provide such interpretation or clarification as the bidding contractors reasonably request.

6.4.2 At Client's request, Consultant shall provide an analysis of the contractors' bids and shall consult with Client concerning the contractor(s) to be engaged.

6.5 *Implementation Services*

6.5.1 Consultant shall act as the client's representative for communications between Client and the Contractor(s).

6.5.2 Consultant shall review construction schedules provided by the Contractor(s) and shall consult with Client concerning Contractor(s) schedules and the progress of the Work.

6.5.3 Consultant shall convene a pre-construction meeting with the contractors and other significant parties to provide an overview of the project and to respond to Contractors questions. Consultant shall prepare a memorandum of the discussions and any directions issued.

6.5.4 During the course of remediation, Consultant shall attend regular job-site meetings and shall prepare and maintain memoranda documenting the discussions, and any decisions made.

6.5.5 Consultant shall respond to reasonable inquiries from Contractors seeking clarification of the plans and specification or decisions regarding unforeseen conditions.

6.5.6 Consultant shall review shop drawings and submittals to determine if they are reasonably consistent with the intent of the plans and specifications prepared by Consultant. Consultant may rely upon plans, calculations or certifications by professional consultants that are provided by the Contractor(s) without checking the accuracy of the consulting certified.

6.5.7 Consultant shall visit the site as frequently as reasonably necessary to observe the performance of the Work. Client understands that Consultant shall not be on site continuously nor shall Engineer observe all of Contractor's observations. Consultant shall maintain a written record of all site visits which shall describe the progress of the work and which shall record any questions raised by Contractor(s) and any directions issued.

6.5.8 Consultant shall prepare any clarifications or supplementary instructions reasonably necessary to enable the Contractor(s) to complete the Work in accordance with the intent of the Contract Documents.

6.5.9 Consultant shall review Contractor(s)' invoices to determine, in general, if the invoice is consistent with the progress of the Work. After review of such invoices, and subject to any withholds or backcharges which the Consultant believes appropriate, Consultant shall recommend Client's payment of the Contractor's invoice.

6.5.10 Consultant shall not be responsible for the means, methods, techniques or sequences used by Contractor(s) during the performance of the Work. Consultant shall not supervise or direct Contractor(s) work, nor shall Consultant be liable for any failure of contractor(s) to complete their work in accordance with the Contract Documents or applicable Laws and Regulations. Consultant shall not be responsible for the safety of persons or property at the Project Site, as such responsibility is solely the obligation of the Contractor(s).

6.6 Post-Remediation Monitoring

To the extent set forth in the Scope of Work, Consultant shall take samples and measurements necessary to determine the efficacy of remediation. At the conclusion of such work, Consultant shall prepare a report describing its observations, measurements and tests, if any.

7. Client's Responsibilities

In addition to payment for the Services performed under this Agreement, Client agrees to:

7.1 Assist and cooperate with Consultant in any manner necessary and within its ability to facilitate Consultant's performance under this Agreement.

7.2 Designate a representative who will have authority to receive all notices and information pertaining to this Agreement and who will enunciate Client's policies and decisions and assist as necessary in matters pertaining to the Project and this Agreement. Client's representative will be subject to change by written notice.

7.3 Provide access to and/or obtain permission for Consultant to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. Client recognizes that the use of investigative equipment and practice may unavoidably alter conditions or affect the environment at the existing Project Site(s). Consultant will operate with reasonable care to minimize damage to the Project Site(s). The cost of repairing such damage will be borne by Client, and is not included in the Fee unless otherwise stated.

7.4 Correctly designate on plans to be furnished to Consultant, the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s) and shall be responsible for any damage inadvertently caused by Consultant to any such structure or utility not so designated. Client warrants the accuracy of any information supplied by it to consultant, and acknowledges that Consultant is entitled to rely upon such information without verifying its accuracy.

7.5 Supply to Consultant all information and documents in its possession or knowledge which are relevant to the Services herein described, including all information in Client's possession, or reasonably available to Client concerning prior uses of the Project Site and Hazardous Materials present at the Site. Prior to the commencement of any Services in connection with a specific property, Client shall notify Consultant of any known potential or possible health or safety hazards existing on or near the Project Site.

7.6 Execute all manifests or other documents evidencing ownership, possession or control over Hazardous Materials.

7.7 Provide all required notifications to Governmental Agencies or the public, related to the existence, discharge, release, disposal, and transportation of Hazardous Materials.

8. Changed Conditions

If, during the course of performance of this Agreement, conditions or circumstances are discovered which were not contemplated by Consultant at the commencement of this Agreement, Consultant shall notify Client in writing of the newly discovered conditions or circumstances, and Client and Consultant shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after notice, Consultant may terminate this agreement and be compensated as set forth in Section 19, "Termination".

9. Certifications

Consultant shall not be required to execute any certification with regard to work performed, tested, or observed under this Agreement unless: 1) Consultant believes that sufficient work has been performed by Consultant to provide a sufficient basis to issue the certification, 2) Consultant believes that the work performed, tested or observed meets the criteria of the certification, and 3) the exact form of such certification has been approved by Consultant, in writing, prior to execution of this Agreement. Any

certification by Consultant is limited to an expression of professional opinion based upon the Service performed by Consultant, and does not constitute a warranty or guaranty, either expressed or implied.

10. Allocation of Risk

10.1 *Limitation of Liability*

The total cumulative liability of Consultant, its shareholders, directors, officers, employees and agents, to Client arising from Services performed or to be performed by Consultant whether in contract, indemnity, contribution, tort, or otherwise, and including attorneys' fees due under this Agreement, shall not exceed 100% of gross compensation received by Consultant under this Agreement or fifty thousand dollars (\$50,000), whichever is greater; provided, however, that such liability shall be further limited in the following respects:

If Consultant's fee exceeds \$250,000, liability to Client shall not exceed \$250,000.

Consultant shall have no liability to Client for any special, consequential, incidental or penal losses or damage including but not limited to losses, damages or claims related to the unavailability of Client's property or facility, shutdowns or service interruptions, loss of use, profits or revenue, inventory or use charges or cost of capital or claims of Client's customers; and Consultant shall not be liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities which are not correctly shown on plans furnished by Client to Consultant during the performance of authorized Services or which are not called to Consultant's attention by Client.

10.2 *Indemnification*

10.2.1 Subterranean Structures

Client shall indemnify and hold harmless Consultant, its agents, subcontractors, directors, officers and employees, ("Consultant Entities") from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorneys' fees or other loss ("Loss") arising from damage to subterranean structures or utilities which are not correctly shown on plans furnished by Client to Consultant.

10.2.2 Hazardous Materials

Client shall indemnify and hold harmless The Consultant Entities, from and against any and all claims, damages or liability arising from or related to hazardous waste existing at the Project Site prior to the commencement of Consultant's Services under this Agreement, unless caused by the sole negligence or willful misconduct of Consultant.

10.2.3 Negligent Performance of Services

Consultant agrees to indemnify and hold harmless Client, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorneys' fees or other loss ("Loss") to the extent caused by Consultant's negligent performance of its Services under this Agreement.

10.3 *Continuing Agreement*

The indemnity obligations and the limitations of liability established under this Agreement shall survive the expiration or termination of this Agreement.

If Consultant provides services to Client, but which the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify and the limitations on liability established under this Agreement shall apply to such services as if an amendment had been executed by the parties.

11. Consultant's Insurance

Consultant shall obtain, if reasonably available, (1) statutory Workers' Compensation/Employer's Liability coverage; (2) Commercial General Liability; (3) Automobile Liability; and (4) Professional Liability insurance coverage in policy amounts of not less than \$1,000,000.

Consultant agrees to issue certificates of insurance evidencing such policies upon written request.

12. Ownership and Maintenance of Documents

Client provided documents will remain the property of Client. Unless otherwise specified in the Scope of Work, all documents and information obtained or prepared by Consultant in connection with the performance of the Services, including but not limited to Consultant's reports, boring logs, maps field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively called "Documents") are the property of Consultant and Consultant shall, in its sole discretion, have the right to dispose of or retain the Documents. Consultant retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from Services. Consultant shall have the right to use the Documents for any purpose. Client shall have the right to reuse the Documents for purposes reasonably connected with this Project, including design and licensing requirements of the Project for which the Services are provided.

13. Samples and Cuttings

If in-house laboratory, testing or analytic services are provided by Consultant, Consultant shall preserve such soil, rock, water, or other samples obtained from the project site as it deems necessary for the Project for not longer than forty-five (45) days after issuance of any documents that include the data obtained from these samples. Client shall promptly pay and be responsible for the removal and lawful disposal of samples, cuttings, and hazardous substances, unless other arrangements are mutually agreed in writing.

Client shall take custody of all monitoring wells and probes during an investigation by Consultant, and shall take any and all necessary steps for the proper maintenance, repair or closure of such wells or probes at Client's expense if so requested by Consultant.

14. Relationship of the Parties

Consultant shall perform its Services under this Agreement as an independent contractor, and its employees shall at all times be under its sole discretion and control. Consultant shall have full power and authority to select the means, manner and method of completing Services for individual jobs without detail, control, or direction from Client.

15. Confidentiality

15.1 Use of Reports

All reports and information developed by Consultant are for the sole use of Client and are not intended to benefit any other person or entity. Neither Consultant nor Client shall disclose, disseminate or otherwise provide such reports or information except as required for the completion of Contractor's work or the monitoring of the project by Governmental Agencies.

15.2 Production of confidential Information as Required by Law

15.2.1 Subpoena or Other Legal Process

Notwithstanding the provisions of Paragraph 15.1, Consultant may provide any information requested by subpoena or other legal process. Consultant shall promptly provide written notice to Client, including a copy of the subpoena or other legal process, to permit Client to take whatever action it deems necessary to protect the confidentiality of the information sought.

15.2.2 Search Warrant

Notwithstanding the provisions of Paragraph 15.1, Consultant may provide any information requested by search warrant. Consultant shall provide Client with notice, as soon as practical, of the service of the search warrant.

15.3 Use of Confidential Information in Consultant's Defense

Notwithstanding the provisions of Paragraph 15.1, Consultant may disclose any confidential information if necessary to defend Consultant, its employees, officers and subconsultants in any civil, criminal or administrative proceeding.

16. Third Party Reliance Upon Reports

All Documents are prepared solely for use by Client and shall not be provided to any other person or entity without Consultant's written consent, nor shall they be mentioned, communicated, disclosed or referred to in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material, without the express written authorization of Consultant. Client shall defend, indemnify and hold harmless Consultant, its officers, shareholders and employees, from and against any action or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without Consultant's written consent.

No other party other than Client may rely, and Client shall make no representations to any party that such party may rely, on Documents without Consultant's express written authorization.

17. Assignment and Subcontracts

Neither party shall assign this Agreement, or any part thereof, without the written consent of the other party, except an assignment of proceeds for financing purposes. Consultant may subcontract for the services of others without obtaining Client's consent where Consultant deems it necessary or desirable to have others perform certain Services.

18. Suspension and Delays

Client may, at any time, by ten (10) days written notice, suspend performance of all or any part of the Services by Consultant. Consultant may terminate this Agreement if Client suspends Consultant's work for more than sixty (60) days and be paid as set forth under Termination. In the event Consultant's field or technical work is suspended by Client or interrupted due to delays other than delays caused by Consultant, the time for completion of the performance of the Services shall be appropriately adjusted and Consultant shall be equitably compensated (in accordance with Consultant's current Compensation Schedule) for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or at the option of Client, for such similar charges that are incurred by Consultant for demobilization and subsequent re-mobilization.

Consultant shall not be liable to Client for any failure to perform or delay in performance due to circumstances entirely beyond its control, including, but not limited to, pollution, contamination, or release of hazardous substances, strikes, lockouts, riots, wars, fires, flood, explosion, "acts of God", adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market.

19. Termination

19.1 Termination for Convenience

Consultant and Client may terminate this Agreement for convenience upon thirty (30) days written notice delivered or mailed to the other party.

19.2 Termination for Cause

In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon ten (10) days written notice delivered or mailed to the other party, which

termination notice shall state the basis for the termination. The Agreement shall not be terminated for cause if the breaching party cures the breach within the ten (10) day period.

19.3 Payment on Termination

In the event of termination, other than caused by a material breach of this Agreement by Consultant, Client shall pay Consultant for the Services performed prior to the termination notice date, and for any necessary Services and Expenses incurred in connection with the termination of the project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts. Such compensation shall be based upon the schedule of fees then currently used by Consultant.

20. Disputes

All disputes between Consultant and Client shall be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated within forty-five (45) days of service of notice. The mediation shall be administered by the American Arbitration Association in accordance with their most recent Construction Mediation Rules, or by such other person or organization as the parties may agree upon.

No action or suit may be commenced unless the mediation did not occur within forty-five (45) days after service of notice, the mediation occurred but did not resolve the dispute, or a statute of limitation would elapse if suit was not filed prior to forty-five (45) days after service of notice.

21. Attorneys' Fees

If any action or proceeding is commenced to interpret, enforce, reform or nullify any of the terms of this Agreement, or to seek damages for the breach of any of its provisions, the prevailing party shall be awarded reasonable attorneys' fees, costs and expenses.

22. Integration and Severability

This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is found to be void or voidable, such portion shall be deemed stricken and the Agreement shall be reformed to as closely approximate the stricken portions as the law allows.

End of General Conditions