

RECEIVED

3:12 pm, Jun 11, 2009

Alameda County
Environmental Health



March 13, 2006

Mr. Mark Garrell
Affordable Housing Associates
1250 Addison Street, Suite G
Berkeley, California 94702

Re: Proposal for Environmental Consulting Services
Soil Characterization
160 14th Street, Oakland, California

Dear Mr. Garrell:

ACC Environmental Consultants, Inc., (ACC) is pleased to present you with a Proposal for Consulting Services to conduct soil characterization at 160 14th Street, Oakland, California. Enclosed please find two copies of the proposal. Please review the proposal, sign both copies, return one to ACC, and retain the other for your files.

Appropriate soil characterization at the subject property should reduce overall soil disposal costs. ACC has included methodology and recommendations that we believe will maximize the quality of the data obtained and optimize the options available to Affordable Housing Associates for cost effectively disposing of excess soil generated during site development.

If you have any questions about this proposal, please contact me at (510) 638-8400, ext. 109 or email me at ddement@accenv.com.

Sincerely,

A handwritten signature in black ink that reads 'David DeMent'. The signature is fluid and cursive, with the first name 'David' and last name 'DeMent' clearly legible.

David DeMent, PG, REA II
Division Manager

Enclosure

/tb:dd

PROPOSAL FOR CONSULTING SERVICES

ACC Environmental Consultants, Inc., (ACC) presents this proposal to characterize soil for suspect constituents of concern in soil at 160 14th Street, Oakland, California (Site), for Affordable Housing Associates (Client).

INTRODUCTION

The Site consists of an approximate 15,000-square foot rectangular property located at the north corner of Madison Street and 14th Street in Oakland, California. Currently the Site is occupied by an asphalt-paved parking lot.

In the *Phase I Environmental Site Assessment (ESA) Report* prepared by ACC on April 9, 2001, two gasoline underground storage tanks (USTs) and one waste oil UST were removed in 1986 as part of dismantling of the Mobil-branded gasoline station. Based on subsurface investigation conducted at that time, Mobil considered the issue to be closed, but no regulatory closure letter was issued.

To obtain data for the Oakland Fire Services Agency to issues regulatory case closure, ACC performed a Soil Boring Investigation in July 2001 in the area of the former gasoline USTs. As documented in ACC's *Letter Report - Soil Boring Investigation* dated August 6, 2001, some petroleum hydrocarbon odor and suspect soil discoloration around 8 feet bgs indicated that hydrocarbon residues were present in soil at approximately the bottom of the former USTs but were negligible or nonexistent in deeper soils from 13 to 15.5 feet bgs. Groundwater samples indicated weathered, degraded hydrocarbon residuals.

Groundwater results also indicated that minor concentrations of tetrachloroethene (PCE) present below the Site. Since only PCE was detected, ACC believed this compound originated from the dry cleaners located adjacent to the Site. The release appears to be minor, as the PCE impact in groundwater approximated the applicable drinking water standard maximum contaminant level.

SCOPE OF SERVICES

While construction is proposed at grade for most of the Site, excess soil will be generated in order to install stacked parking spaces along the northeast border. Therefore, soil to the total depth of the proposed excavation, 12 feet bgs, should be characterized to assess worker safety and profile the soil for offsite disposal. In addition, soil in the vicinity of the former USTs should be removed and profiled for offsite disposal. To achieve these goals, ACC proposes to first conduct a limited soil boring investigation for the soil to be excavated for the parking spaces, followed by stockpile sampling of the soil located around the former USTs. Based on the information available at this time, ACC believes this progressive approach is both logical and cost-effective to appropriately segregate impacted soil from excess soil.

TASK 1 – Soil and Groundwater Management Plans

ACC will prepare a Soil Management Plan (SMP) that will include protocols for: best management practices to control dust, tire-tracking, storm-drain runoff, etc.; besting and properly handling any soils that are discovered to be stained or that give off chemical odors; testing and properly disposing of all soils to be exported from the Site as part of regrading or construction; and removal of, and confirmation sampling around, any unknown tanks that might be encountered during subsurface work.

If any pumping or displacement of groundwater is required for installation of the vehicle lifts, a Groundwater Management Plan will be prepared which requires disposing of water to the sanitary sewer rather than storm drain system.

TASK 2 – Soil Excavation for Parking Spaces

Task 2.1 - Project Coordination

ACC will provide project coordination and prepare a Site-Specific Health and Safety Plan for the proposed work. ACC will obtain a soil boring permit from the Alameda County Public Works Agency. ACC will mark proposed soil boring locations at the Site and contact Underground Services Alert to locate any underground public utilities prior to performing drilling and sampling activities. If necessary, ACC will contract with a subsurface utility locating service to clear soil boring locations.

TASK 2.2 - Soil Boring and Sampling

ACC proposes to advance six (6) exploratory soil borings with a truck-mounted Geoprobe® rig to total depth of 12.0 feet bgs. ACC will collect two to three representative soil samples per boring. Select soil samples will be laboratory composited and analyzed for total petroleum hydrocarbons (TPH) as gasoline, benzene, toluene, ethyl-benzene, and total xylenes (BTEX), methyl tert butyl ether (MTBE), halogenated volatile organic compounds (HVOCs), and the 17 California Assessment Material metals (CAM 17 metals) by appropriate EPA Methods. Standard turnaround time for analytical results is 5 working days. ACC will pre-screen soil samples with a ppbRAE photo-ionization detector (PID). Soil cuttings will not be generated. Upon completion, the borings will be filled with cement grout to just below the surface and the boring will be completed with concrete and returned to its original condition.

TASK 2.3 - Technical Report

Upon receipt of the analytical results, ACC will first verbally inform Client of results and prepare a technical report of findings from the soil boring investigation. This report will include analytical results, a scaled site plan, boring logs, recommendations, and conclusions. ACC will also discuss feasible options for selective excavation and/or reusing lead-impacted soil onsite.

Following receipt of analytical results, ACC will prepare a letter report of findings that summarizes data obtained in this investigation. The letter report will include a scaled site plan, analytical results, conclusions, and recommendations. The primary goals are to: 1) characterize soil for constituents of concern; 2) obtain the data necessary to profile the soil for offsite disposal; and 3) recommend the most cost-effective manner of soil excavation and potential soil reuse to decrease overall soil disposal costs. ACC will assist with profiling the soil with the permitted facility of choice by the Client and/or Client's General Contractor.

TASK 3 - Former UST Area Characterization

Soil around the USTs should be excavated by the Client, with oversight by ACC. Once all soil is stockpiled on plastic sheeting, ACC will collect representative samples to be analyzed for TPH as gasoline, BTEX, MTBE, and CAM 17 metals by appropriate EPA Methods. Standard turnaround time for analytical results is 5 working days, with faster turnaround available for additional costs. ACC will then issue a Soil Characterization Letter specifically addressing this soil and assist with profiling the soil with the permitted facility of choice by the Client and/or Client's General Contractor.

COST OF SERVICES

Please see the attached Environmental Project Cost Estimate for not-to-exceed costs of services for the tasks listed above. Please note the Client will only be invoiced for the actual services performed or costs incurred.

SCHEDULING

Upon receipt of written notice to proceed, ACC anticipates completing Tasks 1 through 3 within 20 to 25 working days depending on potential delays related to obtaining the ACPWA soil boring permit or appropriate access to the Site. Once all soil is properly excavated from the former UST area and stockpiled, ACC anticipates completing Task 4 within 10 working days (includes 5 working days for sample analyses).

EXCLUSIONS

Due to the limited information available, costs associated with unusual or unforeseen circumstances, including but not limited to, unidentified conduits or other nonstandard construction features or conditions are not included in this proposal. Other costs not included are as follows:

- Costs for sample analysis related to unknown constituents.
- Additional sampling or analyses that may be required by regulatory agencies or due to changes in regulatory requirements.
- Remedial actions that may be required by the federal, state, or local agencies if contamination has occurred and exceeds the maximum allowable levels.
- This proposal does not include the cost for an onsite utility locating service.

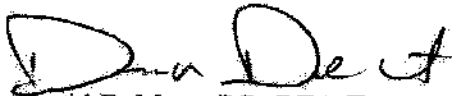
In the event that these conditions or circumstances are encountered, you will be notified before ACC proceeds with any extra work. At that time ACC would adjust proposal fees to allow for these conditions as best as possible and then invoice additional fees on a Time and Materials Basis.

APPROVAL

Please indicate your acceptance of this proposal by signing below and returning an executed copy to our office. This proposal is subject to the attached "General Terms and Conditions Exhibit A." Work will commence upon receipt of an executed copy of the agreement and receipt of a retainer equivalent to Task 1. Full payment is due upon submission of the letter report of findings. Any additional services requested by Client after submission of the reports will be invoiced on a Time and Materials Basis in accordance with the compensation schedule in the attached Exhibit A.

ACC looks forward to working with you on this project. Please call me if you have any questions at (510) 638-8400, ext. 109 or email me at ddement@accenv.com.

Sincerely,



David DeMent, PG, REA II
Environmental Division Manager

/tb:dd

Enclosures

BY: _____

TITLE: _____

DATE: _____

In the event that these conditions or circumstances are encountered, you will be notified before ACC proceeds with any extra work. At that time ACC would adjust proposal fees to allow for these conditions as best as possible and then invoice additional fees on a Time and Materials Basis.

APPROVAL

Please indicate your acceptance of this proposal by signing below and returning an executed copy to our office. This proposal is subject to the attached "General Terms and Conditions Exhibit A." Work will commence upon receipt of an executed copy of the agreement and receipt of a retainer equivalent to Task 1. Full payment is due upon submission of the letter report of findings. Any additional services requested by Client after submission of the reports will be invoiced on a Time and Materials Basis in accordance with the compensation schedule in the attached Exhibit A.

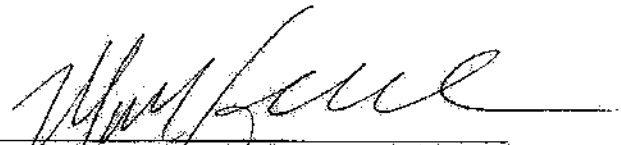
ACC looks forward to working with you on this project. Please call me if you have any questions at (510) 638-8400, ext. 109 or email me at ddement@accenv.com.

Sincerely,


David DeMent, PG, REA II
Environmental Division Manager

/Ab:dd

Enclosures

BY: 
TITLE: Sr. Project Mgr.
DATE: 3/24/06

Environmental Project Cost Estimate

ACC Environmental Consultants, Inc.

Project Information

ACC Project No.: 56078

Project Name: Soil Characterization

Project Location: 160 14th Street
Oakland, CA

Prospect Information

Mark Garrell
Affordable Housing Associates
1250 Addison Street
Suite G
Berkeley, CA 94702
Phone: 510-849-8500
Fax: 510-548-3094

Proposal No. 6078

Date Prepared: Monday, March 13, 2006

Task Number and Description	Unit Price	Units	Quantity	Amount
1 - Soil and Groundwater Management Plan				
Professional Geologist	\$130.00	Hours	2	\$260.00
Staff Geologist	\$80.00	Hours	8	\$640.00
CAD Draftsperson	\$65.00	Hours	1	\$65.00
Administrative Support Personnel	\$55.00	Hours	2	\$110.00
Sub-Task Sub-total:				\$1,075.00
Task Sub-total:				\$1,075.00
2 - Soil Excavation for Parking Spaces				
2.1.1 Project Coordination and Mark USA				
Professional Geologist	\$130.00	Hours	2	\$260.00
Staff Geologist	\$80.00	Hours	4	\$320.00
Vehicle	\$0.50	Each	25	\$12.50
Sub-Task Sub-total:				\$592.50
2.1.2 Obtain Required Permits				
Staff Geologist	\$80.00	Hours	3	\$240.00
Permit	\$300.00	Each	1	\$300.00
Sub-Task Sub-total:				\$540.00
2.1.3 Prepare Site Specific Health and Safety Plan				
Site Safety Plan	\$300.00	Each	1	\$300.00
Sub-Task Sub-total:				\$300.00
2.2.1 Advance exploratory soil borings				
Professional Geologist	\$130.00	Hours	8	\$1,040.00
Drilling Subcontractor (Full Day)	\$2,415.00	Lump Sum	1	\$2,415.00
Miscellaneous Supplies	\$50.00	Lump Sum	1	\$50.00
Travel Cost (Car)	\$0.55	Miles	25	\$13.75
Photo-Ionization Detector	\$100.00	Each	1	\$100.00
Sub-Task Sub-total:				\$3,618.75
2.2.2 Analyze Samples				
TPHg, BTEX, MTBE (soil)	\$75.00	Each	3	\$225.00
CAM-17 Metals	\$150.00	Samples	1	\$150.00
HVOCs (soil)	\$81.00	Samples	1	\$81.00
Sub-Task Sub-total:				\$456.00
2.3.1 Report Preparation				
Professional Geologist	\$130.00	Hours	3	\$390.00
Staff Geologist	\$80.00	Hours	12	\$960.00

\$1500
ET
MB

Refer to the Standard Fee Schedule for Tasks and Services not specifically addressed in these details.

Task Number and Description	Unit Price	Units	Quantity	Amount
Staff Geologist	\$80.00	Hours	12	\$960.00
CAD Draftsperson	\$65.00	Hours	4	\$260.00
Administrative Support Personnel	\$55.00	Hours	3	\$165.00
		Sub-Task Sub-total:		\$1,775.00
2.3.2 Soil Profiling				
Professional Geologist	\$130.00	Hours	1	\$130.00
Staff Geologist	\$80.00	Hours	3	\$240.00
		Sub-Task Sub-total:		\$370.00
		Task Sub-total:		\$7,652.25
3 - Former UST Area Characterization				
3.1.1 Soil Sampling				
31 Professional Geologist	\$130.00	Hours	6	\$780.00
Miscellaneous Supplies	\$25.00	Lump Sum	1	\$25.00
Miscellaneous Supplies	\$50.00	Lump Sum	1	\$50.00
Vehicle	\$0.50	Each	25	\$12.50
		Sub-Task Sub-total:		\$867.50
3.2.2 Analyses				
32 TPHg, BTEX, MTBE (soil)	\$95.00	Each	1	\$95.00
Total Lead	\$31.00	Samples	2	\$62.00
		Sub-Task Sub-total:		\$157.00
3.2.3 Characterization Letter				
33 Professional Geologist	\$130.00	Hours	2	\$260.00
Staff Geologist	\$80.00	Hours	6	\$480.00
Administrative Support Personnel	\$55.00	Hours	2	\$110.00
		Sub-Task Sub-total:		\$850.00
3.3 Profiling				
34 Professional Geologist	\$130.00	Hours	1	\$130.00
Staff Geologist	\$80.00	Hours	3	\$240.00
		Sub-Task Sub-total:		\$370.00
		Task Sub-total:		\$2,244.50
		Subtotal Labor:		\$7,380.00
		Subtotal Expense:		\$2,978.75
		Subtotal Lab:		\$613.00
		Total Environmental Consulting Services Cost:		\$10,971.75

ARTICLE I. CONSULTING SERVICES

Consulting Services as used herein, refer to those services which include, where appropriate: 1) Asbestos surveys, project design and management; 2) lead-based paint surveys, project design, and management; 3) Indoor air quality and biological investigation, testing, project design and management; 4) Environmental Site Assessments (ESA), including Phase I ESAs performed in accordance with ASTM Practices E-1527-00 and E1528-00; 5) Soil and groundwater monitoring, testing and consulting; 6) Remedial project design; 7) Storage tank removal project design and management; 8) Regulatory compliance consulting; 9) General construction management and consulting; 10) Energy auditing and consulting; 11) Environmental sample collection and analysis; and 12) Software programming, distribution, support and related services.

ARTICLE II. ADDITIONAL SERVICES

Client may request that ACC perform consulting services in addition to those services specified in "SCOPE OF SERVICES" of the proposed consulting services to which these terms and conditions are attached and of which these terms and conditions form a part (which agreement, together with all exhibits incorporated therein, including these terms and conditions, shall be referred to collectively as the "Agreement"). If ACC agrees to perform such services, such additional services will be performed on a time and materials basis and invoiced, in addition to the fixed fee or cost ceiling amount set forth in the Agreement, in accordance with the compensation schedules set forth within the Proposal, Scope of Services, Cost Estimate, or attached Fee Schedule.

II.1 Labor Cost - Labor cost shall be the total number of hours worked on the project by each employee times the employee's hourly rate as indicated on the attached Proposal, Scope of Services, Cost Estimate, or Fee Schedule.

Rates will apply between the hours of 6:00 AM and 8:00 PM Monday through Friday. Night hours on weekdays, Monday through Thursday, shall be charged at 125% of the day base rates or as indicated. Weekend hours, between 8:00 PM Friday and 6:00 AM Monday, shall be charged at 150% of the base rates quoted or as indicated. Minimum charge for Technicians shall be four (4) hours per day. All rates stated herein will remain in effect through December 31, 2005. Comparable rates, reflecting prevailing industry standards, will be annually re-negotiated if the contract period is extended past December 31, 2005.

II.2 Direct Costs - Direct non-salary costs shall be actual costs plus 15% service charge covering overhead and profit on all such actual costs which shall include but not be limited to the following:

II.2.a. Services directly applicable to the work, such as special legal and accounting expenses, computer time or rental and programming costs, laboratory charges and similar costs not applicable to general overhead.

II.2.b. Identifiable reproduction costs applicable to the work such as drawings, photocopying, printing, binding and similar costs.

II.2.c. Identifiable communication expenses such as long distance telephone, telegraph, facsimile and delivery charges and postage other than for general correspondence.

II.2.d. Living and travel expenses of employees when away from home office on business directly connected with the work.

II.2.e. Transportation expenses for local travel directly connected with the work, including automobile mileage reimbursement at actual rates not to exceed \$0.40 per mile, bridge tolls, parking fees and related expenses.

II.2.f. Direct materials and supplies acquired for or consumed solely for the work under this Agreement and not normally provided as part of overhead.

II.3. Subcontracted Services ACC may engage subcontractors to perform services that are typically performed by subcontractors and that comprise a portion of the Work. If ACC seeks to engage a subcontractor to perform services not typically performed by a subcontractor, ACC shall obtain the written approval of Client to engage such subcontractor. Subcontracted services and outside consultant costs shall be costs plus 15% service charge covering overhead and profit.

Client acknowledges any stop in the Work ordered by Client or delay caused by Client or Client's agents, representatives or contractors in providing necessary data, or by any change to project plans or in the laws governing procedures as they exist on the date of this Agreement may require additional services, changes in the schedule of services, and/or changes in the fee. Client shall notify ACC in writing of any changes to the project plans. Following (a) written notification to ACC of changes to the project plans; (b) any changes in the laws governing procedures; or (c) the accumulation of more than ten (10) working days of delays or stops in Work, ACC shall identify, and shall notify Client in writing of, any additional services required, changes in the schedule of services, and/or added fee required, as a result of those changes, work stoppage or delay. If Client does not notify ACC in writing of any objections it has to the performance of additional services, changes to the schedule or additional fees identified in such written notification within ten (10) days of Client's receipt of the notification, Client shall be deemed to have accepted the changes in the Work and the schedule and any additional fees described in the notification. If Client objects to any changes in the Work, the schedule or to additional fees proposed in the notification, ACC may suspend its performance of the Work until ACC and the Client agree on additional services, changes to the schedule and any additional fees.

The services specified in the "SCOPE OF SERVICES", together with any additional services that ACC agrees to perform shall be referred to collectively in these general terms and conditions as "Work."

ARTICLE III. PAYMENT

ACC shall invoice Client monthly and following the completion of the Work. Invoices are due and payable upon receipt. In the event that any payment of an invoice is not received by ACC within thirty (30) days after client's receipt of the invoice, Client shall pay to ACC an additional charge of 1% of the invoice amount per month or the maximum amount permitted by law, whichever is less, accruing from the date of the invoice. This charge is intended to cover, at least in part, the additional costs imposed on ACC by overdue accounts. In the event that an invoice is not paid within thirty (30) days of Client's receipt of the invoice, ACC shall have the right to suspend its performance of the Work until such invoice is paid. There shall be added to all charges due under the Agreement amounts equal to any applicable sales or use taxes now or hereafter imposed under the authority of a federal, state or local taxing jurisdiction.

Client's obligations pursuant to this Article shall survive termination of the Agreement.

ARTICLE IV. PERIOD AND SCOPE OF AGREEMENT

The Agreement shall become effective on the date noted in the first paragraph of the Agreement, and except as provided in Articles XVIII and XX below, shall continue until completion of the Work.

ARTICLE V. PREPARATION OF DOCUMENTS

Any reports, specifications, and other documents prepared by ACC shall be prepared in accordance with standards deemed reasonable by general industry standards. ACC shall not be responsible for the content, format, errors or omissions in any such documents unless such content, format, errors or omissions result from ACC's willful misconduct or gross negligence. ACC shall not be liable for costs or damages to Client or to third parties caused by delay or termination of any project due to judicial or administrative action, with respect to any documents prepared by ACC, regardless of the basis of such action. ACC shall not be liable for costs or damages caused by errors or omissions of any government agency or agencies in specifying the content or methodology of documents prepared by ACC.

ARTICLE VI. STANDARD OF CARE

ACC shall perform the Work in a manner consistent with the level of standards of care and skill ordinarily exercised by professionals performing comparable services under comparable circumstances at the time ACC's services are performed. Client recognizes that those standards may subsequently change because of modifications in the state of practice and acknowledges that ACC shall not be required to foresee or perform in accordance with such standards. No express or implied warranty or guarantee is included in or intended by the Agreement. No statements contained in any report, opinion, document or otherwise, whether prepared prior to, at the same time as, or subsequent to the Agreement constitute any warranty or guarantee by ACC as to the Work.

In the performance of Phase I Environmental Site Assessments ("Phase I ESA"), ACC shall conduct the investigation in conformance to industry standards and current professional practice and will be limited to visual observation of surface conditions at the site, interviews with public agency personnel and knowledgeable persons, and a review of readily available reports and literature. The likelihood of hazardous substance contamination resulting from past and current known uses of the site and immediately adjacent properties will be the focus of the Phase I ESA investigation. As a result, certain conditions may not be identified in the report. These include contaminant plumes below the ground surface from a remote source; contamination incurred following the site reconnaissance by ACC; levels of contamination that are below current regulatory standards but exceed possible future standards; and naturally occurring chemical, biological or other toxics in the surface or subsurface environment.

It is possible that materials currently existing or that may exist in the future at the site, may be considered hazardous. Regulatory evaluation criteria are constantly changing, and concentrations of contaminants presently considered low may, in the future, fall under more stringent regulatory standards that require remediation. Judgements and opinions expressed by ACC, which are based on our understanding and interpretation of current regulatory standards, should not be construed as legal opinions.

ACC shall not be responsible for identifying asbestos-containing materials, lead-paint, biological growth, or other contaminant, environmental concern or hazard concealed behind walls, under or above surface finishes, behind or below furnishings and fixtures, or areas otherwise inaccessible during any investigation or other related work on the project.

ARTICLE VII. LIMITATION OF REMEDY

Notwithstanding anything to the contrary in this Agreement, the total cumulative liability of ACC shall not exceed the available proceeds with respect to such liability under insurance coverage carried by ACC. Client shall indemnify, defend and hold harmless ACC for any liability in excess of such insurance coverage.

ARTICLE VIII. ACCESS TO PROPERTY

Client recognizes that performance of duties hereunder will require that employees, consultants, agents and/or subcontractors of ACC be on, in and about the project site. Client grants to ACC and warrants (if the project site is not owned by Client) that permission has been granted for a right of entry from time to time for ACC, its employees, consultants, agents and subcontractors, on the project site for the purposes of performing the Work.

ARTICLE IX. HAZARDOUS OR UNSAFE CONDITIONS

Client has fully informed ACC of the type, quantity, and location of any hazardous, toxic, or dangerous materials or unsafe or unhealthy conditions which may affect the Project which Client knows to exist. If Client hereafter becomes aware of any such information, Client shall immediately inform ACC. The discovery of unanticipated hazardous, toxic, or dangerous materials or unsafe or unhealthy conditions constitutes a Changed Condition which may justify a revision to Services. If ACC takes emergency measures to protect the health and safety of ACC Parties and/or the public or to prevent undue harm to the environment, the Fee shall be appropriately adjusted to compensate ACC for the cost of such emergency measures.

ACC shall not be responsible for the health and safety of any persons other than ACC Parties, nor shall it have any responsibility for the operations, procedures or practices of persons or entities other than ACC Parties.

ARTICLE X. UNDERGROUND UTILITIES

Client shall designate to ACC the location of all subsurface utility lines and other subsurface man-made objects, including but not limited to pipes, tanks, cables, etc. (in this Agreement collectively called "underground utilities") within the boundaries of the job site. ACC will conduct at Client's expense such additional research as in ACC's professional opinion is appropriate to attempt to verify the location of any underground utilities at the job site, but Client shall remain responsible for the accurate designation of their location and shall indemnify, defend and hold ACC harmless from any liability for injury or loss arising from damage to any inaccurately located underground utilities. Client warrants the accuracy of any information supplied by it to ACC, acknowledges that ACC may not verify the accuracy of such information and agrees that ACC is entitled to rely upon any information supplied by Client.

ACC shall not be liable for any damage or injury resulting from damage to subterranean or unexposed structures or elements (including but not limited to pipes, wires, cables, tanks) that are not called to ACC's attention and correctly shown on any plans furnished to ACC by Client, even if such damage or injury results from Work performed by ACC.

ARTICLE XI. REPORTING AND DISPOSAL REQUIREMENTS

Nothing contained in this Agreement shall be construed or interpreted as requiring ACC to assume the status of an owner, operator, generator, person who arranges for disposal, transporting, storing, treatment or disposal facility as those terms appear within any federal or state statute governing the treatment, storage, and disposal of hazardous substances or wastes. Client shall be solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies of the existence of any hazardous, toxic or dangerous materials located on or in the Project Site(s), or discovered during the performance of this Agreement. Client shall be responsible for making and paying for all necessary arrangements to lawfully store, treat, recycle, dispose of or otherwise handle hazardous or toxic substances or wastes, including, but not limited to, samples and cuttings, to be handled in connections with the Project. ACC may, in its sole discretion, agree to make such arrangements on behalf of Client, as Client's agent.

ARTICLE XII. DOCUMENTATION, SAMPLES AND CUTTINGS

ACC shall not be obligated to retain project related reports, notes, submittals, or other documentation (including final documentation) as ACC deems necessary for no longer than five (5) years after the issuance of any final survey report, specifications, and/or project documentation. ACC shall not be obligated to notify Client prior to any discharge of said documentation.

ACC shall not be obligated to preserve such soil, rock, water, air and/or other samples obtained from the Project Site(s) as ACC deems necessary for no longer than forty five (45) days after the issuance of any document that includes the date of sample collection. ACC shall not be obligated to notify Client prior to any discharge of said samples.

ARTICLE XIII. CHANGED CONDITIONS

If, during the course of the performance of the Services under this Agreement, conditions or circumstances develop or are discovered which were not contemplated by ACC at the commencement of this Agreement, and which materially affect ACC's ability to perform the Services or which would materially increase the costs to ACC of performing the Services, then ACC shall notify Client in writing of the newly discovered conditions or circumstances, and Client and ACC shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within 30 days after notice, ACC may terminate this Agreement and be compensated as set forth under Article XX.

ARTICLE XIV. CONFIDENTIALITY

To the extent that (a) data and information which are submitted to ACC by Client to enable ACC to perform the Work and (b) data and information obtained by ACC in performing the Work are designated by Client in writing as containing information that is confidential or proprietary to Client, such data and information shall be considered as confidential and shall not be disclosed by ACC to any third party without the written consent of Client within five (5) years from the earlier of (a) the date of completion of the Work; and (b) termination of the Agreement. Notwithstanding the foregoing, ACC shall not be required to keep confidential any data or information that (a) are or become publicly available through means other than by disclosure of ACC; (b) are independently developed by ACC without the use of any data provided by or gathered from Client; (c) are rightfully obtained from third parties; or (d) that must be made public for ACC to comply with applicable laws, rules or regulation. Client acknowledges and agrees that ACC may provide data and information that it receives from Client to federal, state or local environmental regulatory agencies or other governmental agencies, if ACC is required by applicable laws, rules or regulations to provide such data and information.

ARTICLE XV. RIGHTS IN DATA

Following ACC's request for such data or information, Client shall deliver to ACC in a timely manner all data and information in Client's possession that are required for ACC's performance of the Work.

Provided that ACC has been fully paid for its services, Client shall have the right to use all original written material including reports, specifications, drawings, blueprints, working notes, photographs, graphical representations and other documentation prepared for the Client pursuant to the Agreement (the "Materials"), but only for the purpose expressly contemplated in the Agreement. Client shall not use the Materials for other projects, for additions to the subject project, or for portions of the project following the termination of the Agreement, except by permission granted by ACC in a written agreement that provides for the payment of a fee that is mutually agreed on. Client may not alter, update or revise any of the Materials without ACC's written authorization. Client agrees to indemnify, defend and hold ACC harmless against any claims arising from any third parties' use of or reliance on the Materials that is not expressly authorized in the Agreement.

ARTICLE XVI. PERSONNEL SUPPLIED BY ACC

ACC will select and allocate personnel to perform the Work, including its employees, consultants, subcontractors and other personnel which ACC may from time to time deem suitable. ACC will, however, make reasonable efforts consistent with sound business practice to honor Client's specific requests for assignment of personnel.

ARTICLE XVII. EXCUSABLE DELAY

ACC shall not be responsible for any delay in performing or completing the Work due to fires, strikes, labor disputes, war, civil commotion, delays in transportation, delays in receipt of requested information, delays in reviews of reports or data, shortages of labor or material, untimely illness, death or disability of employees, legal action of third parties, changes in laws or regulations, or other causes or events beyond the reasonable control of ACC. Any such event that is beyond the reasonable control of ACC shall justify the suspension of delivery of services and shall extend the time of performance to such extent as may be necessary to enable ACC to perform the Work with reasonable diligence after the event that caused the delay ceases to prevent ACC from performing the Work. In addition, ACC may be entitled to an equitable adjustment in its fees following such delay.

ARTICLE XVIII. DEFAULTS

Client shall be considered to be in default under the Agreement if Client (a) fails to pay any sum to be paid hereunder or fails to fulfill any other obligation or perform any other duty and such failure continues for five (5) days after written notice thereof is given to Client, or (b) ceases doing business as a going concern or is named as the bankrupt party under any proceedings under the Bankruptcy Act or other insolvency laws (voluntary or involuntary), unless, solely in the case of any involuntary insolvency proceeding, such proceeding is dismissed, within thirty (30) days of its filing. If the Client is in default, ACC shall have the right to terminate the Agreement.

No right or remedy conferred on ACC under this Article shall be exclusive of any other right or remedy of ACC of whatever kind. No failure by ACC to insist upon the strict performance of any terms hereof or to exercise any right of remedy following a default by Client and no acceptance of full or partial payments due during the continuance of any such default, shall constitute a waiver of any of ACC's rights with respect to such default.

ARTICLE XIX. INDEMNIFICATION

Client shall indemnify, defend, and save harmless the ACC Parties, from any claim, suit, liability, damage, injury, expense, including attorney's fees, or other loss (collectively called "Loss") arising out of (a) breach of this Agreement by Client, (b) Client's willful misconduct or negligence in connection with the performance of this Agreement, (c) any actual or potential environmental pollution or contamination, including, without limitation, any actual or threatened release of toxic or hazardous materials; or (d) any action taken by ACC Parties as Client's Agent under the section entitled Reporting and Disposal Requirements.

ACC shall indemnify, defend and save harmless, Client, from any Loss arising out of (a) breach of this Agreement by ACC Parties or (b) willful misconduct or negligence by ACC Parties in connection with the performance of the Services under this Agreement.

Allocation of Loss between Client and ACC Parties shall be on a comparative fault basis. In no event shall any party be liable for consequential damages. Client's indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Client under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

This Article shall survive termination of the Agreement.

ARTICLE XX. TERMINATION

Either party may terminate the Agreement at any time by giving to the other party thirty (30) days written notice of such termination. Following any termination of the Agreement, Client shall pay ACC on a time and materials basis for all services performed and for all expenses incurred prior to the effective date of said termination, in accordance with Article II. If the Agreement is terminated for a reason other than a breach by ACC of its obligations under the Agreement, ACC shall be paid for services performed and costs incurred to the termination notice date, including direct costs incurred, as outlined in Article II, plus an additional amount not to exceed ten percent (10%) of charges incurred to the termination notice date to compensate ACC for services to bring the work to an orderly completion and to prepare project files and documentation, plus any additional direct costs incurred by ACC, including but not limited to cancellation fees or charges of third parties. ACC will use reasonable efforts to minimize such additional charges.

ARTICLE XXI. NO THIRD PARTY RIGHTS

The parties recognize and acknowledge that the services rendered by ACC under the Agreement are for the sole benefit of Client and are not intended to benefit any third party, including but not limited to contractors, subcontractors, consultants, tenants and other occupants of the project site or any successor owners of the project site.

ARTICLE XXII. ARBITRATION

Any dispute or claim in law or equity arising out of this Agreement shall be decided by neutral binding arbitration in accordance with the rules of the American Arbitration Association, and not by court action except as provided by California law for judicial review of arbitration proceedings. Judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties shall have the right to discovery in accordance with Code of Civil procedures section 1283.05.

ARTICLE XXIII. GENERAL PROVISIONS

XXIII.1. Assignment. The Agreement may not be assigned by either party, either voluntarily or by operation of law without prior written consent of the other party.

XXIII.2. Successors. The Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns.

XXIII.3. Governing Law. The Agreement and performance hereunder shall be governed by the laws of the State of California.

XXIII.4. Modifications. Any change or modification hereof and any terms and conditions of any purchase order or other instrument issued by Client in connection with the Agreement or the service to be rendered hereunder, which are in addition to or in conflict with the provisions of the Agreement will not be binding upon ACC without ACC's written consent thereto.

XXIII.5. Severability. If any provision hereof shall be invalid or unenforceable either in its entirety or by virtue of its scope or application to given circumstances, such provision shall be deemed modified to the extent necessary to render the same valid, or as not applicable to given circumstances, or be excised from the Agreement, as the situation may require and the Agreement shall be construed and enforced as if such provision had been included herein as so modified in scope or application, or had not been included herein, as the case may be, it being the intention of the parties that had they known of such invalidity or enforceability at the time of entering the Agreement, they would nevertheless have agreed on the terms contained herein, either excluding such provisions, or including such provisions only to the maximum scope and application permitted by law, as the case may be, but the remaining provisions hereof shall be given effect in accordance with intent hereof.

XXIII.6. Enforcement and Arbitration. In the event that any legal action or arbitration proceeding is commenced by either party against the other party to enforce this Agreement or with respect to any breach of this Agreement or to enforce an arbitration proceeding or any legal action to enforce an arbitration award, the prevailing party shall be entitled to recover from the unsuccessful party such sum as the court or arbitrator may award as reasonable attorney's fees.

XXIII.7. Jury Waiver. In the event of a civil action between Client and ACC, the parties by executing the Agreement, knowingly and willingly waive to the fullest extent permitted by law any right to a trial of such action by a jury as provided under both the United States Constitution and any applicable state constitution and other applicable state or federal law. This section shall survive termination of the Agreement.

XXIII.8. Limitations on Actions. The Client, by executing the Agreement, limits the period in which it may bring an action against ACC, its affiliates, and their respective directors, officers, employees, agents and subcontractors to one (1) year after the earliest of (a) the date of ACC's final invoice with respect to the Work; (b) the date on which the Client records a Notice of Completion with respect to the subject project, pursuant to Section 3093 of the California Civil Code; (c) when there is actual completion of the subject project, pursuant to Section 3086 of the California Civil Code; and (d) in the event Client or ACC terminate the Agreement, the date of such termination. In any case, where the Client fails to give written notice to ACC within a reasonable time, not to exceed sixty (60) calendar days, from the discovery of any loss, damage or defect giving rise to a claim, the Client shall be time-barred from bringing such claim against ACC. This section shall survive termination of the Agreement.

XXII.9. Notices. Except as provided elsewhere in the Agreement, all notices or other communications to either party by the other as may be required by the Agreement shall be deemed given when made in writing and (a) delivered in person by a courier service or (b) three days after its deposit in the United States Post Office, certified mail, return receipt requested. The notices shall be addressed to the signatories to the Agreement at the addresses set forth in the Agreement. Either party may change its address for notice or person to receive notice by written notice of such change to the other party.

XXII.10. Independent Contractor Status. In performing Services under this Agreement, ACC shall operate as, and have the status of, an independent contractor and shall not act as or be an employee of Client.

ACC Environmental Consultants, Inc. 2005 Annual Fee Schedule

Cost of labor services shall be as follows:

<u>Labor Classification</u>	<u>Base Hourly Rate</u>
Expert Witness / Testimony	\$ 255.00
Principal	\$ 180.00
Certified Industrial Hygienist	\$ 155.00
Professional Engineer	\$ 155.00
Computer Programmer	\$ 155.00
Professional Geologist	\$ 130.00
Senior Project Manager/Designer	\$ 100.00
Trainer	\$ 100.00
Project Manager	\$ 90.00
Staff Geologist	\$ 80.00
Staff Hygienist / Technician, Level II	\$ 80.00
<i>(Overtime and/or Nights as defined below)</i>	\$ 98.75
<i>(Double-time and/or Weekends as defined below)</i>	\$ 122.50
Staff Hygienist / Technician, Level I	\$ 75.00
<i>(Overtime and/or Nights as defined below)</i>	\$ 91.25
<i>(Double-time and/or Weekends as defined below)</i>	\$ 102.50
CAD Draftsperson	\$ 70.00
Project Assistant	\$ 60.00
Technical Writer/Editor	\$ 60.00
Database Manager	\$ 55.00
Administrative Support Personnel	\$ 55.00
Data Entry Clerk	\$ 50.00

These rates will apply between the hours of 6:00 AM and 8:00 PM Monday through Friday. Overtime (hours in excess of 8 and up to 12 in one working shift) and/or night hours (weekdays, Monday through Thursday 6:00 PM to 6:00 AM) shall be charged at 125% of the base rates above or as indicated under Technician I/II classifications. Double-time (hours in excess of 12 in one working shift) and/or Weekend hours (between 6:00 PM Friday and 6:00 AM Monday) shall be charged at 150% of the base rates quoted above or as indicated under Technician I/II classifications. In the event that the client requests ACC to respond to an emergency situation (i.e. asbestos spill, etc.) and ACC staff are pre-assigned to an existing project, the emergency response may be billed at 125% to compensate for overtime rates or 150% to compensate for double-time rates. Minimum charge for Technicians shall be four (4) hours per day. All rates stated herein will remain in effect through December 31, 2005. Comparable rates, reflecting prevailing industry standards, will be annually re-negotiated if the contract period is extended past December 31, 2005.