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May 31, 2005

Mr. Crosby Allison
Valliance Capital Group, LLC.
1899 East Roseville Parkway, Suite 150
Roseville, CA 95661

Alameda County

MAR 16 2009

Environmental Health

Re: Proposal for Preparing Summary Letter Regarding Soil and Groundwater Conditions at Property Located at 6293 College Avenue, Oakland, California - EFI Proposal No. 98360-05-18

Dear Mr. Allison:

EFI Global (EFI) hereby submits this proposal to the Valliance Capital Group, LLC (Valliance) to prepare a summary letter for submittal to the Alameda County Health Care Services Agency (County) regarding soil and groundwater conditions at the above-referenced property. The purpose of the letter is to:

- Briefly summarize the findings of Phase One and Two investigations at the Property by AEI Consultants, including the results of soil and grab groundwater sampling;
- Request No Further Action for future investigation and/or remediation of low concentrations of chlorinated hydrocarbons (primarily tetrachloroethene – PCE) detected in shallow soil and groundwater.

EFI will prepare the letter in draft for your review and concurrence. Following your review and incorporation of any comments, EFI will submit the letter to the County. This proposal does not include any follow-up meetings, reports, and or field activities to address any potential questions or comments posed by the County. EFI can provide these services upon request.

EFI's budget estimate for this project is \$1,100.

If you have any questions or comments, please feel free to contact me at (925) 820-9580.

Sincerely,

EFI Global

Mark B. Williams
Senior Scientist



**PROFESSIONAL SERVICES AGREEMENT
ENVIRONMENTAL SITE ASSESSMENT
EFI Global**

This AGREEMENT is made by and between EFI Global (CONSULTANT), and Valliance Capital Group, LLC. (CLIENT). This AGREEMENT is subject to the GENERAL CONDITIONS, attached hereto, along with any other attachments specifically referenced herein.

Date: May 31, 2005

Proposal No: 98360-05-0018

Client: Mr. Crosby Allison
Valliance Capital Group, LLC.
1899 East Roseville Parkway, Suite 150
Roseville, CA 95661

EFI Corporation Contact: Mr. Mark Williams

Phone: 925-820-9580
Fax: 925-820-9587

Project: College Avenue, Oakland Site.

Description: Closure Request Letter

Scope of Services: As specified in the attached proposal.

Time of Performance: Final report submitted in fifteen working days from authorization

Compensation: The CONSULTANT'S fees for services provided under this AGREEMENT will be a lump sum of \$1,100.00 payable upon completion of the project.

Special Terms and Conditions: None

The GENERAL CONDITIONS of this AGREEMENT are accepted by:

CLIENT: Valliance Capital

CONSULTANT: **EFI Global**

By: _____

By: _____

Name: _____

Name: Mark Williams

Title: _____

Title: Senior Scientist

Date: _____

Date: May 31, 2005

General Conditions

1. SCOPE OF SERVICES – EFI Global, referred to herein as "EFI", as an independent consultant agrees to perform the services described in its proposal or, in the absence of a proposal, as defined in writing and approved by EFI and Client, referred to herein as "Services" in accordance with the following.

2. DEFINITIONS. These terms will have the following meanings when used in this Agreement:

- a. **Claims** - All actions, suits, arbitrations, administrative proceedings, demands and claims for any and all damages, injunctive or any other relief based upon any cause of action whatsoever.
- b. **Contaminants** - Asbestos, toxic or any hazardous constituents.
- c. **Indemnities** - EFI, its parent, subsidiaries, affiliates and subcontractors, including their respective officers, directors, employees, principals, partners, agents, successors, and assigns.
- f. **Liabilities** - All liabilities, damage, losses, costs, expenses, settlements, judgments, awards, and governmental penalties and sanctions, including reasonable attorneys' and experts' fees, including those attributable to bodily injury (including death), personal injury and property damage.
- g. **Materials** - Used storage tanks or any associated equipment, contaminated soils or materials.
- h. **Samples** - Specimens or representative pieces, segments or the like and/or the residue there from.
- i. **Pre-Existing Waste** is any hazardous or non-hazardous wastes, substances or Materials existing on the Site prior to the date that the Services are initiated.
- j. **Wastes-Surpluses, by-products, residues and the like and/or fluids** produced by the Services.
- k. **Work Product** - All documents, including but not limited to, reports, notes, drawings, specifications, laboratory test data, and other information prepared by EFI.

3. INVOICING AND PAYMENT - Invoices will be issued monthly and will include supporting documentation, as appropriate. Payments are due at the address appearing on the invoice within thirty (30) days of invoice date. Invoices not paid within thirty (30) days are subject to interest from the 31st day at the rate of 1-1/2% per month (18% per annum) but not to exceed the maximum interest allowed by law. In addition, EFI may, after giving seven (7) days written notice to Client, suspend Services without liability until the Client has paid in full all amounts due EFI on account of Services rendered and expenses incurred including interest on past due invoices or terminate Services without liability. If Client reasonably objects to any or all portions of the invoice, Client shall notify EFI in writing within 10 days of receipt of invoice, give reason for objection and pay all undisputed amounts in the thirty (30) day period. In the event that EFI places Client's account in the hands of an attorney for collection, Client agrees to pay EFI all fees and expenses, including attorneys' fees and expert fees, necessitated thereby.

4. ACCESS. Client grants or shall obtain for EFI and its subcontractors authority to enter the property upon which EFI's Services are to be performed ("Site"), at Client's expense.

The Services do not include supervision or direction of the means, methods or actual work of contractors, other professionals or consultants not retained by EFI. The presence of EFI's representative will not relieve any such contractor, other professional or consultant of its responsibility to perform its work and services in accordance with its contractual and legal obligations and in conformity with the plans and specifications for the Project. Client agrees that each contractor or subcontractor not retained by EFI shall be solely responsible for: (i) working conditions on the Site; (ii) security and safety of persons and property during the performance of its work; (iii) compliance with OSHA regulations; and (iv) providing any and all safety equipment necessary for the protection of its personnel. EFI's monitoring of any contractor's or any subcontractor's procedures is not intended to include a review of the adequacy of such contractor's or subcontractor's safety measure, on or near the Site. It is agreed that EFI is not responsible for safety or security at the Site, other than for EFI's employees, and that EFI does not have the right or duty to stop the work of others.

5. CLIENT DISCLOSURE. Client understands that EFI is relying upon the completeness and accuracy of information supplied to it by Client and others in connection with the Services without independent verification. Client agrees to advise EFI of the existence of any hazardous substances, wastes or conditions affecting the Site or the Services to be performed hereunder. EFI does not assume control or responsibility for the Site or the person(s) in charge of the Site, or undertake the responsibility for reporting to any federal, state or local agencies any conditions at the Site that may present a potential danger to health, safety, or the environment. Client agrees to notify the appropriate federal, state or local agencies as required by law, or otherwise to disclose in a timely manner, any information that may be necessary to ensure Site safety and to prevent damage to health and/or the environment. Client acknowledges that EFI may be required to make such disclosures if Client fails to do so and agrees to hold EFI harmless therefore.

6. STANDARD OF SERVICES AND WARRANTY. EFI will perform the Services using that degree of skill and care ordinarily exercised under similar conditions by reputable members of EFI's profession practicing in the same or similar locality at the time of performance. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED AND THE SAME ARE SPECIFICALLY DISCLAIMED.

Given the difficulty in predicting the environmental and/or physical condition of a site based upon limited sampling and investigative activity, Client recognizes that any statements, opinions and conclusions contained in reports and other documents prepared and/or issued by EFI are only meant to give approximations of the condition of the Site limited to the particular contaminant(s) and/or issues actually targeted by EFI's investigation and the portions of the Site actually investigated, sampled or tested by EFI.

Client shall not be entitled to assert a claim against EFI based on any theory of professional negligence or violation of the standard of care unless and until Client has obtained the written opinion from a licensed, independent and reputable engineering and/or environmental professional, as appropriate for the Services in question, that EFI has violated the standard of care applicable to EFI's

General Conditions

performance of those Services under this Agreement. Client shall promptly provide such independent opinion to EFI and the parties shall endeavor in good faith to resolve the claim within 30 days.

7. WORK PRODUCT. All Work Product shall be EFI's sole property, as author and owner, and EFI hereby reserves and shall retain all common law, statutory and other rights thereto, including copyrights. EFI will furnish Client with the agreed-upon number of written reports and supporting documents for Client's exclusive internal use and reliance and for regulatory submittal in connection with the Site, the Project or the Services; provided, that Client may permit members of its design team to use the Work Product solely for the design of the project for which it was intended. Client acknowledges that the Work Product is intended for the exclusive use and benefit of, and may be relied upon only by, Client.

If Client wishes to distribute any Work Product to any third party for reliance by third party, Client and the third party must first contact EFI and execute EFI's Secondary Client Agreement. Work Product provided for disclosure of information only will not require a separate agreement. EFI shall not be liable for any Claims or Liabilities resulting from or connected with such release for disclosure and Client shall indemnify, defend and hold EFI harmless from any and all such Claims or Liabilities. EFI makes no representation as to the suitability of any Work Product for any such third party's purposes. Client acknowledges that a request for EFI to release any Work Product to a third party creates a potential conflict of interest and agrees that any such request shall serve as a waiver by Client of any such conflict of interest.

Any unauthorized distribution, publication, use or reuse of any Work Product shall be at Client's and recipients sole risk and without liability to EFI. To the maximum extent permitted by applicable law Client agrees to defend, indemnify and hold Indemnities harmless from and against all Claims and Liabilities related to or arising from any unauthorized distribution, publication, use or reuse of the Work Product.

Upon Client's request, Work Product may be provided on electronic media; however, the written copy retained by EFI shall be the official document. EFI makes no representation or warranty, express or implied, that the electronic copy is accurate or complete. Any modifications of the electronic copy by Client shall be at Client's sole risk and without liability to EFI. The electronic copy is subject to all conditions contained in this Agreement.

Client further acknowledges that: (i) the Work Product may be based in part or in whole on facts and/or assumptions provided to, but not independently verified by, EFI; (ii) the Work Product will reflect EFI's findings as to conditions that existed at the time the Services were performed and may not reflect conditions at a later time; and (iii) EFI makes no representations as to such conditions subsequent to the time the Services were performed or with respect to any facts or assumptions provided to, but not independently verified by, EFI.

8. INSURANCE. EFI shall maintain Workers' Compensation and Employer's Liability insurance in accordance with requirements of the state in which the Services are being performed, however, if the state has no mandatory limit of coverage, EFI shall maintain Worker's Compensation insurance with coverage limits of at least \$1,000,000 and Employer's Liability coverage at least \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease. EFI's Worker's Compensation/Employer's Liability insurance policy or policies shall contain a waiver of subrogation endorsement in favor of Client. Commercial General Liability insurance with a limit of \$1,000,000 per occurrence and in the aggregate for bodily injury and property damage, Automobile Liability insurance including owned and hired vehicles with a limit of \$1,000,000 per occurrence and in the aggregate for bodily injury and property damage, and Professional Liability (errors and omissions) insurance with a limit of \$1,000,000 per occurrence and in the aggregate. Client shall be named as an additional insured on EFI's Commercial General Liability and Automobile Liability insurance policies.

9. CHANGES. Notwithstanding any other provisions of the Agreement to the contrary, EFI shall be entitled to additional compensation for work in the event that EFI experiences any increases in costs due to changes in EFI's scope of work from that included in EFI's original proposal or for additional work requested by client or changes in the manner or method of performance of work or due to changes in schedule or circumstances not solely caused by EFI. EFI shall be compensated for all such additional work either (1) as previously agreed in writing by the parties; or (2) on a time and materials basis in accordance with EFI's then current standard commercial rates.

10. INDEMNITY BY EFI. EFI shall indemnify, defend and hold harmless Client, its officers, directors, agents employees and affiliated and parent companies against Claims or Liabilities of third parties (including attorneys fees and costs of defense) for personal injury, disease or death, and damage of property arising during the performance of Services to the extent caused by the negligence or willful misconduct of EFI.

11. REMEDIES. Except as provided in Section 10 of this Contract, neither party, nor their parent, affiliated or subsidiary companies, nor the officers, directors, agents or employees of any of the foregoing, shall be liable to the other in any action or claim for incidental, indirect, special, collateral, consequential, exemplary or punitive damages arising out of or related to the Services, including without limitation, loss of profits, loss of opportunity, loss of production, or loss of use. Any protection or limitation against liability for any losses or damages afforded any individual or entity by these General Conditions shall apply whether the action in which recovery of damages is sought is based upon contract, tort (including, to the greatest extent permitted by law, the sole, concurrent or other negligence, whether active or passive, and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies inconsistent with these terms are waived.

12. ENVIRONMENTAL CONDITIONS. Client shall provide (or cause the Site owner to provide) EFI with the identity and location of all subsurface facilities and obstructions on the Site. Client agrees to waive any Claims or Liabilities against EFI and to indemnify, defend and hold EFI harmless from any Claims or Liabilities for damages to subsurface facilities or obstructions that are

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not accurately identified or located by Client or others. Client assumes responsibility for air, subsurface and/or ground pollution and environmental impairment from toxic substances or Contaminants existing at the Site and shall indemnify and defend EFI from any Claims or Liabilities of third parties related thereto, except where such Claims or Liabilities are caused by the sole negligence or willful misconduct of EFI.

13. FORCE MAJEURE. EFI shall have no liability for any failure to perform or delay in performance of the Services caused by circumstances beyond its reasonable control, including, but not limited to, strikes, riots, wars, floods, fires, explosion, acts of nature, acts of government, labor disturbances, or delays in transportation.

14. LIMITATIONS OF LIABILITY. To the greatest extent allowed by law, Client agrees that EFI's aggregate liability to Client for any and all injuries, Claims or Liabilities, of whatever kind or character, arising out of or in any way related to this Agreement, the Services or the Site, shall be limited to amounts recoverable under the insurance policy to be maintained by EFI (including its Professional Liability Insurance). The parties agree that in any dispute over the terms of this Agreement or any issue arising under this Agreement, they will make a good faith effort to resolve the matter without litigation. Such efforts shall include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. The parties agree that before either party commences an action against the other party, they will consider the use of alternate forms of dispute resolution, including mediation (or arbitration if both parties agree to arbitrate the dispute). Pending the outcome of such dispute resolution, both parties shall take immediate steps to mitigate any damages. Until such time as the dispute is resolved, EFI reserves the right to suspend its Services hereunder and shall so timely notify Client.

15. OWNERSHIP OF WASTE. Upon request, EFI shall assist Client in the proper handling, storage, transportation and/or disposal of the Pre-Existing Waste in accordance with all applicable federal, state and local laws and regulations. Client shall provide appropriate disposal identification numbers, select the disposal site(s) and sign all required manifests, disposal contracts and other documentation necessary to allow EFI to complete the Services in a timely manner. Client agrees to look solely to the disposal facility and/or transportation concern for any damages arising from improper transportation or disposal of the Pre-Existing Waste. In no event shall EFI take title to or be liable for disposal or remediation costs associated with Pre-Existing Wastes.

16. SAMPLES AND WASTE DISPOSAL. Samples generally are consumed or altered during testing and are disposed of promptly upon completion of the tests. If Client wishes EFI to retain any Samples, at Client's written request, EFI will use its best efforts to retain preservable Samples, but only for a mutually acceptable time and for an additional charge. EFI reserves the right to refuse storage of any Samples. Client agrees that EFI is not responsible or liable for loss of Samples retained in storage. If Client requests EFI to containerize Wastes, Client will provide a secure storage location at or near the Site to prevent tampering with the Wastes. Non-hazardous Wastes will be disposed of by EFI for an additional charge at an appropriately licensed facility.

In the event that Samples or Wastes contain Contaminants, EFI will either (i) return the Samples or Wastes to Client for proper disposal or (ii) using a manifest signed by Client as generator and for an additional fee, have the Samples or Wastes transported to a location selected by Client for final disposal. In such event, Client acknowledges and agrees that EFI will be acting solely as agent for Client and will at no time assume title, constructive or express, to any Samples or Wastes. Client agrees to pay all costs associated with the storage, transport, and disposal of Samples and Wastes.

Should EFI be requested as part of the Services to hire a subcontractor for the removal of any Materials from the Site, title to the Materials will remain with Client, and EFI will act solely as an agent for Client in arranging for and coordinating the removal and transport of the Materials by EFI's subcontractor. At no time will EFI or its subcontractor take title to the Materials, and all manifests incidental to such Services shall be executed by Client. If Client wishes EFI to execute the manifests, Client shall provide written authorization for EFI to sign solely as an agent for Client, and Client hereby expressly agrees to remain the sole generator of such Materials. To the maximum extent permitted by applicable law, Client shall defend, indemnify and hold Indemnitities harmless from and against all Claims or Liabilities resulting from the rendering of Services as set forth in this Section 16, except to the extent such Liabilities and/or Claims are determined to have been caused solely by the negligence of, or the willful violation of any applicable environmental law by EFI.

17. TERMINATION. Either party may terminate this Agreement without cause upon 14 days' prior written notice. In such event, Client shall take possession of the Site and the materials and equipment paid for and belonging to Client, and EFI shall be paid for all Services performed to the date of termination. In the event Client requests termination without cause, EFI shall also be paid all reasonable expenses and costs incurred in Project close out. This Agreement will terminate automatically and without notice upon the insolvency of, or upon the filing of a bankruptcy petition by or against Client.

18. OPINIONS OF COST. If included in the Services, EFI will provide opinions of cost for installation of materials, remediation or construction based upon EFI's experience on similar projects. However, such opinions are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise in advance by EFI in writing. Client understands the actual cost of work depends on many factors beyond EFI's control and may vary significantly from EFI's opinion.

19. LITIGATION SUPPORT - In the event that EFI's employees are requested by Client or compelled by subpoena or otherwise by any party to give expert or witness testimony or otherwise participate in a judicial or administrative proceeding involving the Client at any time, Client shall compensate EFI at 150% of the Billing Rate, including preparation time, and shall reimburse EFI for all out of pocket costs as provided herein.

20. ENTIRE AGREEMENT. The terms of this Agreement shall be deemed accepted by Client at the earlier of (1) EFI's initiation of Services at the verbal or written direction of Client or (2) Client's written agreement to be bound by these terms. This Agreement constitutes the entire understanding between the parties. Any waiver, modification or amendment of this contract shall be effective