

CONTRACT FOR ENVIRONMENTAL CONSULTING SERVICES

PROPOSAL

_____, hereinafter referred to as Consultant, proposes to perform the services for _____, hereinafter referred to as Client, at the fees and costs set forth in the following Scope of Work and attached Fee Schedule.

SCOPE OF WORK: _____
_____.

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions, including any Supplemental Terms and Conditions, are incorporated by reference into the Proposal (including any separately attached Fee Schedule) of _____, hereinafter Consultant, for the performance of the work and services described in Proposal (herein-after Scope of Work) for the benefit of _____, hereinafter Client, and together shall constitute the Agreement between the Consultant and Client under which the work and services are to be performed by Consultant for Client. In the event of any conflict between the provisions and terms of these documents, those conflicting terms shall be interpreted in accordance with the following priority: (1) Supplemental General Conditions, (2) General Terms and Conditions, and (3) Proposal (with the written words of the Proposal taking precedence over the Fee Schedule, if one is attached).

SECTION 1: SCOPE OF WORK

- a. The scope of work shall include all services provided by Consultant which are reasonably necessary and appropriate for the effective and prompt fulfillment of Consultant's obligations under the Agreement.
- b. It is understood that the Scope of Work defined in the Proposal is based on the information provided by Client. If this information is incomplete or inaccurate, or if unexpected conditions are discovered, the Scope of Work may change, even as the work is in progress. In addition, Client may request additional services which will constitute a change in Scope of Work. When a change in the Scope of Work is necessary, a written amendment to the Agreement shall be executed by Client and Consultant prior to Consultant commencing the change in the work or services. If Consultant believes an immediate change is necessary to protect human health or the environment, a written amendment incorporating the change shall be made as soon as is practicable, and Client's consent to such amendments shall not be unreasonably withheld.
- c. Consultant shall obtain and maintain all permits, licenses or other approvals necessary to perform the Scope of Work, and upon request shall furnish copies of the same to Client.
- d. In all matters relating to the performance of this Agreement, Consultant is and shall remain an

independent contractor.

SECTION 2: STANDARD OF CARE

a. Consultant represents and warrants that it possesses the training, education, experience, skill, competence, and resources needed to properly perform the Scope of Work set forth in this Agreement. Consultant further represents and warrants that the work and services performed by Consultant under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing in the State of _____. No other representation, warranty, or guarantee, express or implied, is intended.

b. Client acknowledges that subsurface or other concealed conditions on, below, or about the work site may vary from those conditions encountered in specific borings, surveys or explorations performed by Consultant and that the information and recommendations developed by Consultant are based solely on the information available from such borings, surveys, and explorations.

SECTION 3: RIGHT OF ENTRY

a. If the services to be performed under the Scope of Work are to be performed on property controlled by Client, Client hereby grants Consultant and its subcontractors the right to enter from time to time in order for Consultant to fulfill the Scope of Work. Client understands that even though Consultant will take reasonable measures to return the property to the condition it was in before Consultant commenced its activities, the use of sampling and exploration equipment may cause some damage which cannot be fully corrected. Client also understands that the discovery of certain hazardous substances and conditions and/or the taking preventive measures relative to these substances and conditions may result in a reduction of the value of the property upon which the substance or condition is found to exist or the preventive measures are taken. Accordingly, Client waives any claim against Consultant and its subcontractors and agrees to defend, indemnify and hold Consultant and its subcontractors harmless from any claim based upon the diminished value of real property allegedly arising from the discovery of a hazardous substance or condition or the taking of a preventive measure, unless such claim is based upon the negligent performance of services under the Scope of Work.

b. If the services to be performed under the Scope of Work are to be performed on property controlled by Client, Client shall notify Consultant of the existence of any subterranean structures (pipes, tanks, cables, or other utilities, etc.) and Consultant shall not be liable for damage or injury arising from damage to subterranean structures which are not called to Consultant's attention. If Consultant is required to locate subterranean structures on property controlled by Client, this service will be specifically stated in the Scope of Work.

c. If the Scope of Work is to be performed on property which is not controlled by Client, Client agrees to obtain permission from the party controlling the property to Consultant's entry and the performance of the Scope of Work. Unless otherwise specified in the Scope of Work, it shall be

assumed that Client does not know the location of any subterranean structures (pipes, tanks, cables, or other utilities, etc.) and it shall be Consultant's obligation to ascertain such knowledge.

d. Consultant agrees to schedule its activities to minimize interference with the on-going operations and activities of Client or any third party whose property may be the subject of the Scope of Work. Consultant shall, and shall cause its subcontractors, to abide by all of Client's facility rules and regulations regarding the protection of health and safety of employees and third parties, but it shall be Client's obligation to make such rules and regulations known to the Consultant prior to Consultant commencing work at Client's facility. Consultant shall have the obligation to determine if such rules and regulations exist with regard to facilities not controlled by Client.

SECTION 4: CLIENT DISCLOSURES

a. Client shall notify Consultant of any known or suspected hazardous substances or conditions on the property upon which the Consultant's work or services are to be performed which in any way relate to or affect the Scope of Work and Consultant shall have the right to rely on the accuracy of such Client-furnished information in its agreement to perform the work and services. Such hazardous substances shall include but not be limited to any substance or condition which poses or may pose a present or potential hazard to human health or safety or an adverse impact upon the environment. Thereafter, Consultant shall take all reasonably necessary and appropriate measures to protect its employees, agents and subcontractors against possible hazards to health and safety and to prevent adverse impacts to the environment.

b. If the presence of an unanticipated hazardous substance or condition is discovered during the performance of the Scope of Work which could pose a hazard to Consultant's employees, agents and subcontractors, Consultant shall cease work and determine the necessary health and safety precautions to continue the Scope of Work. The cost of these necessary health and safety precautions shall be a change and shall be managed in accordance with Section 1.b.

SECTION 5: BILLING AND PAYMENTS

a. Unless otherwise specifically provided, billings will be based on actual units used at the standard rates shown in the Proposal or attached Fee Schedule(s) plus the reimbursement for direct expenses, including but not limited to travel costs (air fares, taxi, car rentals and fuel, mileage fees for personal or company vehicles, parking, tips, room charges, meal charges, etc.), long distance telephone charges, postage and shipping fees exceeding \$1.00 per parcel/ envelope, expedited delivery services, printing and reproduction charges, special instrument or equipment rental, disposable field supplies (bailers, sample containers, clean gloves and suits, etc.) and other customary expenses. Reimbursable direct expenses shall be billed at Consultant's cost plus any multiplier set forth in the Proposal. Client shall pay Consultant for services performed in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth herein. Invoices will be submitted by Consultant from time to time, but no more frequently than every two weeks, and shall be due and payable upon receipt. If Client objects to all or any portion of an invoice, Client shall nevertheless timely pay the undisputed amount of such invoice and promptly advise Consultant in writing of the reasons for disputing any amount.

b. Client shall pay an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by Consultant more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. Payments shall first be applied to accrued interest and then to the unpaid principal amount.

c. Application of the percentage rate indicated above as a consequence of Client's late payments does not constitute any willingness on Consultant's part to finance Client's operation, and no such willingness should be inferred. If Client fails to pay invoiced amounts within thirty (30) calendar days of the date of the invoice, Consultant may at any time, without waiving any other claim against Client and without thereby incurring any liability to Client, suspend or terminate performance under this Agreement; provided any hazardous conditions created by Consultant's previously performed services are rendered non-hazardous to Client's employees, agents and subcontractors, the general public, and the environment. Termination shall not relieve Client of its obligation to pay amounts incurred up to termination.

d. Client's obligation to pay for the services performed under this Agreement is in no way contingent upon Client's ability to obtain financing, zoning, approval of governmental or regulatory agencies, final adjudication of a lawsuit in which Consultant is not involved, or upon Client's successful completion of the project.

e. The fees quoted on the Proposal/ Schedule of Fees shall remain valid for a period of twelve (12) months from the date of the Proposal.

f. If Consultant determines during the performance of the Scope of Work that the cost of completing the Scope of Work or the time of completing the Scope of Work will be substantially more than any estimate made by Consultant in the Proposal, then Consultant shall promptly notify Client in writing of the reason for the increase and allow Client an opportunity to evaluate proceeding with the Scope of Work.

SECTION 6: SAMPLES AND EXPLORATION DEBRIS

a. Soil, rock, water and/or other samples obtained pursuant to the Scope of Work are the property of Client. Consultant shall preserve such samples for no longer than sixty (60) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed upon in writing. Although Client shall be the owner of such samples, Consultant, acting as a bailee and agent of Client, shall arrange for the lawful disposal of all samples. Disposal of contaminated samples shall be at the price set forth in the Proposal/Schedule of Fees. If the Proposal/Schedule of Fees is silent, then the disposal of contaminated samples shall be at the direct cost to Consultant without any multiplier.

b. Although Client shall be the owner of all exploration debris, cuttings, pumpings, and borings generated by Consultant during the performance of the Scope of Work, Consultant, as agent of Client, shall arrange for the proper disposal of all exploration debris, cuttings, pumpings and

borings generated during Consultant's activities. Disposal of contaminated exploration debris shall be at the price set forth in the Proposal/ Schedule of Fees. If the Proposal/Schedule of Fees is silent, then the disposal of all exploration debris, cuttings, pumpings and borings shall be at the direct cost to Consultant without any multiplier.

SECTION 7: REPORTS AND OWNERSHIP OF DOCUMENTS

- a. Consultant shall furnish _____ () copies of each report required by the Proposal/Scope of Work to Client. Additional copies shall be furnished at the rates specified in the Fee Schedule. If paid for, Consultant's Report to Client and the documents normally included in such Reports (laboratory results, boring logs, plume maps, etc.) are the property of Client. Consultant may retain a copy for Consultant's records. All backup documents (field notes, internal calculations and drafts, etc.) shall remain the property of Consultant. However, Consultant shall treat its performance of the Scope of Work and all information generated in the performance of the Scope of Work, whether the property of Client or Consultant, as confidential, and shall not release such information to any governmental agency or third party without the written consent of Client, unless the release of such information is necessary to prevent injury to individuals or the environment.
- b. Consultant shall not publicize the performance of the Scope of Work for Client in any sales brochure, resume of work, or reference list without Client's written consent.
- c. Unless set forth as part of the Scope of Work or otherwise required by law, Consultant does not assume any obligation to and shall not report the results of its sampling, investigation, or analysis to any governmental authority or third party. Determining the need to report and the report of any hazardous substance or condition discovered as a result of Consultant's performance of the Scope of Work shall be the obligation of Client.

SECTION 8: INSURANCE

a. Consultant represents that it and its subcontractors are protected by and have in place the following forms and amounts of insurance:

- (1) Workers Compensation insurance required by the law of the State of _____.
- (2) Professional Liability Insurance of at least \$1,000,000.00 per claim/occurrence and \$1,000,000.00 aggregate covering the professional activities Consultant is performing under the Scope of Work.
- (3) Commercial general liability insurance policies of at least \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate covering the activities Consultant is performing under the Scope of Work.
- (4) Automobile liability insurance with coverage of at least \$500,000 per occurrence.

Consultant shall furnish Client with Certificate(s) of Insurance and will have the Client named as an additional insured on the Certificate(s), where permitted by law, upon Client's request. Client may request such other specific coverage inclusions that are not present in Consultant's insurance, if available. However, the increased cost of such inclusions shall be a change and handled in accordance with Section 1.b.

SECTION 9: ARBITRATION OF DISPUTES

- a. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement shall be decided through arbitration, pursuant to the then most current rules of the American Arbitration Association for Commercial or Construction matters, as appropriate.
- b. The parties further agree that the substantially prevailing party in any dispute shall be entitled to recover its expenses incurred in resolving the dispute, including without limitation, reasonable attorney's fees, consulting fees, court costs, expert witness fees, and similar expenses.
- c. The parties further agree that Consultant will require, as a condition for participation in the performance of the Scope of Work, that all Subcontractors and Materialmen, whose portion of the work amounts to twenty-five thousand dollars (\$25,000) or more, and their insurers and sureties, shall agree to the arbitration provisions contained in this subparagraphs 9.a. and 9.b.

SECTION 10: TERMINATION

- a. Client or Consultant may immediately terminate this Agreement for breach of this Agreement or when it is determined that the work or services being performed is contrary to existing law.
- b. Client may terminate this Agreement for any reason. In the event of such termination for convenience, Client shall give Consultant fourteen (14) calendar days notice of the effective date of termination. Consultant shall use this period to wind down its activities, to complete such analyses and records which may be in the process, place its files in order, and secure the site(s) upon which any work or services under the Scope of Work are being performed.
- c. Consultant shall promptly render to Client a final invoice and Client shall pay Consultant for services rendered and costs incurred up to the effective date of termination, unless the termination was by Client for breach of Consultant's obligations under the Agreement (cause) and a dispute exists as to amounts due Consultant. If the termination is by Client in the absence of a breach (without cause), Consultant may include the reasonable costs of demobilizing, modifying schedules and reassigning personnel. Upon such termination, Consultant shall deliver to Client all reports and documents pertaining to services performed up to termination.

SECTION 11: FORCE MAJEURE

Consultant shall be liable for delays in or failure to perform the work under the Scope of Work in

a timely manner and services, except when such delays or failures are caused by circumstances beyond Consultant's reasonable control, including without limitation, acts of God, acts and/or omissions of federal, state, and local governmental authorities and regulatory agencies, strikes, riots, civil unrest, and war. For delays caused by Client or circumstances beyond the reasonable control of Consultant, Consultant shall be given a reasonable time extension.

SECTION 12: SURVIVAL

a. The parties agree that the provisions of paragraphs 7, 8 and 9 survive the completion and/or the termination of this Agreement. In addition, all provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of services and/or the termination of this Agreement.

SECTION 13: INDEMNIFICATION

a. In addition to the specific provision set forth above, Consultant will defend, indemnify and hold harmless Client and its representatives, agents, employees, and successors and assigns from and against any and all claims, suits, actions, losses, penalties, fines, and damages of any nature whatsoever, including reasonable attorney's fees, expert witnesses fees, and consultant fees, and court costs arising or resulting from (1) Consultant's breach of this Agreement; and/or (2) Consultant's negligence or intentional misconduct.

b. In addition to the specific provisions set forth above, Client will defend, indemnify and hold harmless Consultant and its representatives, agents, employees, and successors and assigns from and against any and all claims, suits, actions, losses, penalties, fines, and damages of any nature whatsoever, including reasonable attorney's fees, expert witnesses fees, and consultant fees, and court costs arising or resulting from (1) Client's breach of this Agreement; (2) Client's negligence or intentional misconduct; and (3) the existence of any hazardous substance or condition at the site(s) where Consultant is performing the work and services under the Scope of Work, unless the negligent conduct of the Consultant exacerbates and causes the spread of the hazardous substance(s) or the development of a hazardous condition.

SECTION 14: SEVERABILITY

Any provision of this Agreement later held to be unenforceable shall be deemed void, but all remaining provisions shall continue in force and shall be construed as a whole.

SECTION 15: TITLES

The titles used in this Agreement are for general reference only and are not part of the Agreement. Parties to this Agreement are advised to read each provision and rely on the guidance of legal counsel as necessary to help assure a complete understanding of all provisions and the obligations imposed through acceptance.

SECTION 16: ASSIGNS

Except for the submission of samples to laboratories for analysis, Consultant may not delegate, assign, subcontract or transfer its duties, responsibilities or interests in this Agreement without the written consent of the Client. Client may assign its rights under this Agreement to a third party, but Client shall remain liable, jointly and severally, with the third party for the performance of Client's obligations hereunder, unless specifically released by the Consultant.

SECTION 17: CHOICE OF LAW

This Agreement shall be interpreted according to the laws of the State of _____.

SECTION 18: NOTICES

Any notice required or permitted by the Agreement shall be deemed duly given if sent in writing, certified or registered mail with return receipt requested to the following addressees and the following addresses:

TO CLIENT: _____

TO CONSULTANT: _____

END OF GENERAL CONDITIONS

SUPPLEMENTAL GENERAL CONDITIONS

I. _____

II. _____
