



NORFOLK

Office of the City Attorney

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November 1, 2019

Ms. Alyssa S. Budlong, PG
Senior Project Manager, Environmental
Froehling & Robertson, Inc.
3015 Dumbarton Road
Richmond, Virginia 23228

Re: Froehling & Robertson, Inc. / City – Phase 1 @ 710, 716, 720, 722, 734
Filer Street, 706 Forbes Street, 2401, 2604, 2608, 2270 Kimball
Terrace and 2605 Marlboro Avenue
File #2019-201053-NNK

Froehling & Robertson, Inc. / City – Phase 1 @ SS Westminster Avenue
File #2019-201167-NNK

Dear Alyssa:

Attached are executed copies of the above-captioned Agreements.

Thank you for your assistance in this matter.

Very truly yours,

Shelley H. Baker
Legal Coordinator II to

/sb

Attachments

cc: ✓ Kyle Spencer, Deputy Resilience Officer, Office of Resilience

AGREEMENT

THIS AGREEMENT, made this 7th day of August, 2019, by and between the **CITY OF NORFOLK** ("City"), a municipal corporation chartered under the laws of the Commonwealth of Virginia, acting by and through the City Attorney, as authorized by Section 2-7 of the City Code, and **FROEHLING & ROBERTSON, INC.**, ("Consultant"), 3015 Dumbarton Road, Richmond, VA 23228, a Virginia corporation specializing in environmental consultation.

WITNESSETH:

WHEREAS, the City requires testing, analyses and evaluation of environmental conditions at S S Westminster Avenue, Norfolk, Virginia (the "Site"); and

WHEREAS, Consultant is ready, willing and able to perform such services and can do so in a prompt manner;

NOW, THEREFORE, for the consideration of these premises and of the mutual agreements hereinafter set forth, the City and Consultant agree to the following:

1. CONSULTANT'S SERVICES. Consultant hereby agrees to perform a Phase I Environmental Assessment to include Asbestos testing of the site as specified in its proposal of August 6, 2019 hereinafter referred to as "Proposal"), which is attached thereto as APPENDIX A and hereby made a part of this Agreement. Consultant agrees to provide all labor, materials and equipment and to perform all work as set forth in the proposal, under Scope of work.

2. TIME FRAME OF SERVICES. Consultant will complete services on or before September 9, 2019.

3. COMPENSATION. Consultant will be compensated at the rates prescribed in the Proposal and will assume responsibility as prime contractor in arranging and paying for subcontracting services. Consultant will submit a payment statement containing detailed, itemized support for charges and costs, and will be promptly paid for all such costs incurred and services rendered. The statements shall be broken down into charges by task as set forth in the proposal. The City reserves the right to request further clarification and a breakdown of all costs. Consultant Agrees to perform all work described herein for an amount not to exceed the total amount of One Thousand Six Hundred Dollars (\$1,600.00).

The City will pay the Contractor within thirty (30) days after the receipt of a proper and correct invoice sent to:

City of Norfolk
Office of Resilience
501 Boush Street
Norfolk, VA 23510
Attention: Kyle Spencer, Deputy Resilience Officer

4. AMENDMENT. The terms of this Agreement may be amended by an agreement of amendment, in writing, and executed by both parties.

5. AUTHORIZATION TO PROCEED. The execution of this Agreement shall constitute authorization for Consultant to proceed, unless otherwise provided for herein.

6. PROFESSIONAL RESPONSIBILITY

(a) Consultant obligates that the services will be performed in a professional manner in accordance with sound practices and procedures and in accordance with the law and the terms of this Agreement.

(b) Consultant shall correct within two years any non-conformance with the scope of work in accordance with the terms of this Agreement, at no additional cost to the City.

7. ACCESS TO PROJECT SITE AND INFORMATION. In order that Consultant may perform the Services, the City covenants that Consultant will have access to the Project site and any of the City's facilities access to which is necessary to perform the Services.

8. MATERIALS AND EQUIPMENT HANDLING AND RETENTION.
In the event that materials on the site, including, but not limited to, samples and cuttings, contain substances or constituents hazardous or detrimental to human health, safety or the environment as defined by federal, state or local statutes, regulations, or ordinances, such materials shall remain the property of the City. The City recognizes and agrees that at no time will Consultant assume title of said materials.

9. FORCE MAJEURE. Consultant shall not be liable to the City for failure to perform its obligations hereunder if and to the extent that such failure to perform results from acts of God or the public enemy, strikes, lockouts, or other

industrial disturbances; civil disturbances; fires; unusually severe weather; or inability to obtain transportation or necessary materials in the open market.

10. RELATIONSHIP OF PARTIES. In performing the Services, Consultant shall be deemed to be an independent contractor and not an agent or employee of City. Nothing herein contained shall be construed to place the parties in the relationship of partners or joint venturers.

11. CONFIDENTIALITY. Consultant covenants that it shall not disclose any confidential proprietary information, that it shall conduct its services at the direction of the City Attorney, and render its reports, advice and consultations in anticipation of litigation.

12. NONDISCRIMINATION. In the performance of this Agreement and any subcontract hereunder, Consultant agrees that it will adhere to the nondiscrimination requirements set forth in City Code Section 33.1-53 which is hereby incorporated by reference.

13. ETHICS IN PUBLIC CONTRACTING. Consultant hereby certifies that it has familiarized itself with Article VII, Section 33.1-86 through Section 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," including the additional statutes set forth in Section 33.1-86 thereof, and further, that all amounts received by it, pursuant to this Agreement, are proper and in accordance therewith.

14. GOVERNING LAW. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

15. SEVERABILITY. If any of the provisions contained herein shall be held invalid or unenforceable, the validity or enforceability of the remaining provisions shall not be impaired thereby.

16. NO THIRD PARTY RIGHTS. This Agreement shall not create any rights or benefits to parties other than the City and Consultant. No third party shall have the right to rely on Consultant opinions rendered in connection with the Services without Consultant written consent and the third party's agreement to be bound to the same conditions and limitations as the City.

17. RISK ALLOCATION. The liability of Consultant, its employees, agents and subcontractors (referred to collectively in this Article as "Consultant"), for the City's claims of loss, injury, death, damage, or expense, including, without limitation, the City's claims of contribution and indemnification, express or implied, with respect to third party claims relating to services rendered or obligations imposed under this Agreement, including all Work Orders, shall not exceed in the aggregate:


(a) The total sum of \$100,000 for claims arising out of professional negligence, including errors, omissions, or other professional acts, and including unintentional breach of contract; or

(b) The total sum of \$1,000,000 for claims arising out of negligence, breach of contract, or other causes for which CONSULTANT has any legal liability, other than as limited by (a) above.


CITY OF NORFOLK

By 
City Attorney

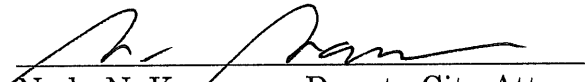
ATTEST:


City Clerk

FROEHLING & ROBERTSON, INC.

By 
Title: Branch Manager

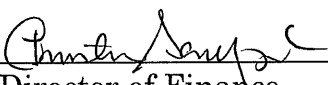
Approved as to form and correctness:


Nada N. Kawwass, Deputy City Attorney

CERTIFICATION OF FUNDING

I hereby certify that the money for this Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Amount: \$1,600.00
Account: 2500 - 41 - 9236 - 5551
Vendor Code: YC0000110707
Contract No.: CT# 50198

 10/25/19
Director of Finance Date

MLD 10/25/19



FROEHLING & ROBERTSON, INC.

Engineering Stability Since 1881

833 Professional Place, West
Chesapeake, Virginia
T 757.436.1111 | F 757.436.1674

August 6, 2019

F&R Proposal No. 1961-00509

Norfolk City Attorney's Office
810 Union Street, Suite 900
Norfolk, Virginia 23518
Attn: Ms. Shelley H. Baker

Re: **Phase I Environmental Site Assessment**
S S Westminster Avenue
Norfolk, Virginia 23504

Dear Ms. Baker:

Froehling & Robertson, Inc. (F&R) is pleased to submit this proposal for providing a Phase I Environmental Site Assessment (ESA) for the above referenced project site. It is our understanding that the Property is made up of six contiguous parcels totaling 2.3-acres of undeveloped land and waterway. This Proposal is being submitted in response to your request. This proposal presents F&R's planned scope of work and fee proposal. If there are any errors or omissions in our scope of services please notify us so that we may revise this proposal.

SCOPE OF SERVICES

This assessment will be performed in general accordance with the Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, (ASTM Designation E1527-13), a standard of practice widely recognized by environmental professionals and financial institutions in the industry. The purpose of our assessment will be to determine whether activities are occurring, or may have occurred on or near the site, that may be considered:

- Recognized environmental conditions - the presence or likely presence of any *hazardous substance or petroleum products* in, on, or at a *property*: (1) due to any *release* to the *environment*; (2) under conditions indicative of a *release* to the *environment*; or (3) under conditions that pose a *material threat* of a future *release* to the *environment*. *De minimis* conditions are not *recognized environmental conditions*.
- Controlled recognized environmental conditions - a *recognized environmental condition* resulting from a past *release of hazardous substances or petroleum products* that has been addressed to the satisfaction of the applicable regulatory authority (for example, as evidenced by the issuance of a no further action letter or equivalent, or meeting risk-based criteria established by regulatory authority), with *hazardous substances or petroleum products* allowed

Corporate HQ: 3015 Dumbarton Road Richmond, Virginia 23228 T 804.264.2701 F 804.264.1202 www.fandr.com

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to remain in place subject to the implementation of required controls (for example, *property use restrictions, activity and use limitations, institutional controls, or engineering controls*).

- Historical recognized environmental conditions - a past *release* of any *hazardous substances* or *petroleum products* that has occurred in connection with the *property* and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the *property* to any required controls (for example, *property use restrictions, activity and use limitations, institutional controls, or engineering controls*).
- De minimis conditions - a condition that generally does not present a threat to human health or the *environment* and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be *de minimis conditions* are not *recognized environmental conditions* nor *controlled recognized environmental conditions*.

Research of Historical Records-F&R will review client provided information and/or attempt to research the following sources to determine the past history and current use of the site: prior ownership records, historical aerial photographs, historical maps, and city directories. Some sources may not be available for all project sites, depending on the nature of historical information obtained by the county or city and depending on the rural or urban nature of the site. F&R will not be performing a chain of title for the property. In accordance with the ASTM Standard, the client is responsible for providing prior ownership information.

User Responsibility-The user is responsible for providing the following information to F&R: a chain of title, information on environmental liens, activity and/or land use limitations, any specialized knowledge of the site, information concerning valuation reduction of the property due to environmental issues, and the current property owner, manager and occupant information (please see attached User Questionnaire).

Research of Regulatory Agency Files and Databases-F&R will review the following readily available files and databases maintained by local, State and Federal regulatory agencies: RCRA Generators, CERCLIS Sites, Permitted Solid Waste Facilities, NPL Sites, Underground Storage Tanks, Aboveground Storage Tanks, Leaking Underground Storage Tanks, State Priority Lists (SPL), Emergency Response Notification System (ERNS), and/or other databases.

Site Reconnaissance-F&R will conduct a site visit to observe the following features and issues: topography, surface hydrology, obvious signs of past and/or current structures, obvious dumping of solid wastes or suspected toxic-hazardous materials, evidence of previous chemical spillage, underground and aboveground storage tanks, and other visual and olfactory observances which may represent recognized environmental conditions. Photographs of these observances will be collected for utilization within the Phase I ESA report.

Business Environmental Risk- As an additional service F&R will perform a non-invasive visual evaluation of Business Environmental Risk concerns related to suspect asbestos containing materials, lead-based paint, wetlands, radon, and mold.



Professional Reporting Services-The Phase I ESA report will present the findings of our assessment along with pertinent comments, conclusions, and recommendations.

TERMS AND CONDITIONS

F&R, by virtue of providing the services described in this proposal, does not assume the responsibility of the person(s) in charge of the site, or otherwise undertake responsibility for reporting to local, State or Federal agencies conditions at the site that may present a potential danger to public health, safety, or the environment. F&R will notify the client of what we understand are the regulatory reporting requirements. The client agrees to notify the appropriate local, State or Federal agencies as required by law, or otherwise to disclose, in a timely manner, information that may be necessary to prevent danger to public health, safety, or the environment. F&R personnel will obtain permissions for F&R to enter onto the site and will notify the owner/operator of his responsibility for waste material disposal as described above.

If, during the conduct of the study, the presence of unforeseen chemical or toxic/hazardous materials, beyond those already identified at the site, are indicated or if insufficient information is available to render a conclusion, the work scope and associated costs may have to be expanded. We will advise you if additional work and costs are necessary prior to undertaking the additional work. If pollutants are discovered that, in our sole opinion, pose unanticipated risks, it is hereby agreed that the scope of services, schedule and the estimated costs will be reconsidered and that this contract shall immediately become subject to renegotiation or, in the sole discretion of F&R, termination. The client recognizes that a discovery of hazardous materials or suspected hazardous materials may result in a significant reduction in the site's property value.

These services will consist solely of those described herein and will not be based upon scientific or technical tests or procedures beyond the scope of described services. F&R services may require decisions, which are not based upon pure science but rather upon judgmental considerations. As with all site assessments, the level of information obtained is a function of both time and budgetary constraints. Additional information regarding subsurface conditions at the study site could be obtained. Should you desire these services, F&R would be pleased to prepare an appropriate proposal outlining the cost and time frame associated with the additional services. Our observations and recommendations will be based upon conditions readily visible at the site at the time of our site visit.

TIMING AND FEES

F&R is prepared to begin work upon receipt of written authorization to proceed with access provided to all structures onsite. An electronic report will be prepared and submitted to the client along with two bound hard copies hand delivered to the Norfolk City Attorney's Office. The Phase I ESA will provide our professional opinion of the impact of recognized environmental conditions in connection with the property. The schedule for delivery of the report will be established upon completion of the site inspection. We anticipate submitting the Phase I ESA report within three



weeks of the notice to proceed from the client. F&R proposes to complete the described scope of service on a lump sum basis for **\$1,600**. Any variations to the schedule, scope of work, or site description may require a modification of the project fee. The fee quoted in this section is valid for a period of 30 days.

ACKNOWLEDGMENTS

Our proposal has been prepared based on the attached Agreement for Environmental Consulting Services. Please complete, sign, and return a copy of the Agreement for Environmental Consulting Services to initiate this project with F&R.

We appreciate the opportunity to serve as your Environmental Consultant and look forward to a cordial working relationship with you on this project. Should you have any questions concerning this Proposal, please contact the undersigned.

Sincerely,

FROEHLING & ROBERTSON, INC.

James Wallace

Aug 6 2019 4:25 PM

DocuSign

James A. Wallace
Environmental Scientist

Alyssa Budlong

Aug 6 2019 4:41 PM

Alyssa S. Budlong, P.G.

Alyssa S. Budlong PG
Senior Environmental Project Manager

DocuSign

Attachments: User Questionnaire (3 pages)



E1527-13 User Questionnaire

Property Name:	
Property Address:	
City:	State:
County:	Zip Code:
Tax Map or Parcel Number:	
Property Owner:	
Contact Name:	Phone Number:
	Fax Number:
	Email:

Are you aware of any environmental cleanup liens against the Property that are filed or recorded under federal, tribal, state or local law?

Are you aware of any activity use limitations (AULs), such as engineering controls, or land use restrictions or institutional controls that are in place at the site and/or have been filed or recorded in a registry under federal, tribal, state or local law?

Do you have any specialized knowledge of the Property and environmental conditions at the Property? Do you have any specialized knowledge or experience related to the *Property* or nearby properties? For example, are you involved in the same line of business as the current or former *occupants* of the *Property* or an *adjoining Property* so that you would have specialized knowledge of the chemicals and processes used by this type of business?

Does the purchase price being paid for this *Property* reasonably reflect the fair market value of the *Property*? If you conclude that there is a difference, have you considered whether the lower purchase price is because contamination is known or believed to be present at the *Property*?



Are you aware of commonly known or *reasonably ascertainable* information about the *Property* that would help the *environmental professional* to identify conditions indicative of releases or threatened releases? For example:

- (a.) Do you know the past uses of the *Property*?
- (b.) Do you know of specific chemicals that are present/once were present at the *Property*?
- (c.) Do you know of spills or other chemical releases that have taken place at the *Property*?
- (d.) Do you know of any environmental cleanups that have taken place at the *Property*?

Based on your knowledge and experience related to the *Property* are there any *obvious* indicators that point to the presence or likely presence of releases at the *Property*?

Please state the reason for performing the Phase I Environmental Site Assessment?

Please provide the following information:

Plat map if available
Property Size
Number and Square Footage of Buildings
Date of Construction
Dates of Renovation
Previous use of the site

Is the Property connected to municipal sewer and water?

Have previous environmental reports been prepared for the site?



- Phase I ESA
- Phase II ESA
- Asbestos Survey
- Lead-Based Paint Survey
- Tank Tightness Testing
- Other

Do you know if any of the following have ever occurred on the site?

- Spills or chemical releases?
- Environmental cleanup?

Are there any of the following currently or formerly located on-site?

- Aboveground storage tanks (ASTs) and/or underground storage tanks (USTs)
- Stored Chemicals
- Landfills / Dump Areas
- Hydraulic Lifts / Elevators
- Oil / Water Separators
- Dry Cleaning Operations
- Wetlands

Does the site have any environmental permits?

- Industrial Discharge
- NPDES
- RCRA Generator
- Air Quality
- Other

Will there be any other parties relying on this report? If so, please provide the contact name, phone, fax, email and address of the party.



FROEHLING & ROBERTSON, INC.
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AGREEMENT FOR ENVIRONMENTAL CONSULTING SERVICES

THIS AGREEMENT, effective as of this 06 day of August 2019, is by and between
The City of Norfolk Attorney's Office, Norfolk, Virginia ("Client")
and F&R Inc., 833 Professional Place West, Chesapeake, Virginia, 23320 ("Consultant").

THE PROJECT is generally described as:
Phase I ESA

("Project") and is located at: S S Westminster Avenue, Norfolk, Virginia 23504
("Project Site").

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

- GENERAL CONDITIONS FOR ENVIRONMENTAL CONSULTING SERVICES; and
- Consultant's SCOPE OF SERVICES AND SCHEDULE OF CHARGES (Exhibit A); and
- Any documents specifically listed below or incorporated by reference in the listed documents.
F&R Proposal 1961-00509

Consultant agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This Agreement may not be modified or altered, except in writing as specifically described in this Agreement.

CLIENT:

CONSULTANT:

Signature: _____

Print Name: _____

Title: _____

Company: _____

Address: _____

Phone No: _____

Fax No: _____

Date: _____

Alyssa S. Budlong, P.E. Aug 6 2019 4:41 PM DocuSign

Alyssa Budlong

Client Manager, Environmental Services

F&R Inc.

3015 Dumbarton Road

Richmond, Virginia 23228

804.264.2701

ABudlong@fandr.com

August 06, 2019

GENERAL CONDITIONS FOR ENVIRONMENTAL CONSULTING SERVICES

1. DEFINITIONS

1.1. Contract Documents. Plans, specifications, and agreements between Client and Contractors, including addenda, amendments, supplementary instructions, and change orders.

1.2. Contractor. The contractor or contractors retained to perform work on the Project, including without limitation remediation work, for which Consultant is providing Services under this Agreement.

1.3. Day(s). Calendar day(s) unless otherwise stated.

1.4. Hazardous Materials. Any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances or pollution.

1.5. Governmental Agencies. All federal, state and local agencies having jurisdiction over the Project.

1.6. Services. The Services provided by Consultant as set forth in this Agreement, the SCOPE OF SERVICES included in Exhibit A and any written amendment to this Agreement.

1.7. Work. The labor, materials, equipment and services required to complete the work described in the Contract Documents.

2. SCOPE OF SERVICES

Consultant will perform the Services set forth in the attached SCOPE OF SERVICES.

2.1. Changes in Scope. If Consultant provides Client with a written confirmation of a change in the SCOPE OF SERVICES, it will become an amendment to this Agreement unless Client objects in writing within 5 business days after receipt. All Services performed by Consultant on the Project are subject to the terms and limitations of this Agreement. If Consultant provides Services, but the parties do not reach agreement concerning modifications to the SCOPE OF SERVICES or compensation, then the terms and limitations of this Agreement apply to such Services, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 18, "Disputes."

2.2. Licenses. Consultant will procure and maintain business and professional licenses and registrations necessary to provide its Services.

2.3. Excluded Services. Consultant's Services under this Agreement include only those Services specified in the SCOPE OF SERVICES.

2.3.1. General. Client expressly waives any claim against Consultant resulting from its failure to perform recommended additional services that Client has not authorized Consultant to perform, and any claim that Consultant failed to perform services that Client instructs Consultant not to perform.

2.3.2. Biological Pollutants. Consultant's SCOPE OF SERVICES specifically excludes the investigation, detection, prevention or assessment of the presence of Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, viruses, and/or any of their byproducts. Consultant's SCOPE OF SERVICES will not include any interpretations, recommendations, findings, or conclusions pertaining to Biological Pollutants. Client agrees that Consultant has no liability for any claims alleging a failure to investigate, detect, prevent, assess, or make recommendations for preventing, controlling, or abating Biological Pollutants. Furthermore, Client agrees to defend, indemnify, and hold harmless Consultant from all claims by any third party concerning Biological Pollutants, except for damages caused by Consultant's sole negligence.

3. PAYMENTS TO CONSULTANT

3.1. Basic Services. Consultant will perform all Services set forth in the attached SCOPE OF SERVICES AND SCHEDULE OF CHARGES for the amount(s) set forth therein.

3.2. Additional Services. Any Services performed under this Agreement, except those Services expressly identified in the attached SCOPE OF SERVICES, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

3.3. Estimate of Fees. In the event that the Consultant provides a written estimate of the costs to perform the Services, the Consultant will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within said written cost estimate. Client recognizes that changes in scope and schedule, and unforeseen circumstances can all influence the successful completion of Services within the estimated cost. The use of a "not to exceed" limitation is not a guarantee that the Services will be completed for that amount; rather, it indicates that Consultant will not incur fees and expenses in excess of the limitation amount without obtaining Client's agreement to do so. Under no circumstances shall a written cost estimate be deemed to be a "not to exceed" price unless it is expressly so stated in this Agreement.

3.4. Rates. Clients will pay Consultant at the rates set forth in the SCHEDULE OF CHARGES.

3.4.1 Changes to Rates. Client and Consultant agree that the SCHEDULE OF CHARGES is subject to

periodic review and amendment, as appropriate, to reflect Consultant's then-current fee structure. Consultant will give Client at least 30 days advance notice of any changes. Unless Client objects in writing to the proposed amended fee structure within 30 days of notification, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client objects to the amended fee structure, and Consultant and Client cannot agree upon a new fee structure within 30 days after notice, Consultant may terminate this Agreement. Such termination shall constitute a termination other than Consultant's material breach of the Agreement and Client shall compensate the Consultant as set forth under Section 17.3, Termination, within 10 days after Consultant's notice of termination.

3.5. Payment Timing; Late Charge. All invoices are due upon receipt. All amounts unpaid 30 days after the invoice date will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law. Attorney's fees and other costs incurred by Consultant in collecting past due amounts shall be paid by Client.

4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES

4.1. Professional Standards . Client acknowledges that Projects that include hazardous or toxic materials and/or investigations of chemicals in the environment involve inherent uncertainties, such as limitations on laboratory analytical methods and variations in subsurface conditions. Such uncertainties may adversely effect a Project's results, even though the Services are performed with skill and care. Client further acknowledges that Consultant's testing and other reports apply only to the services identified and to the samples tested. The data presented by Consultant represents conditions only at the specified locations and at the time designated. Client acknowledges that the data may not represent conditions at other locations and times.

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

4.1.2. Level of Service. Consultant offers different levels of Environmental Consulting Services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive Services yield more information and reduce the probability of error, but at increased cost. Client must

determine the level of Services adequate for its purposes. Client has reviewed the SCOPE OF SERVICES and has determined that it does not need or want a greater level of service than that being provided.

4.1.3. Standard of Care. In providing Services under this Agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in the same locale as the Project and under similar circumstances and at the same time the Services were performed.

4.2. No Warranty. THERE ARE NO EXPRESSED OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE NOT SPECIFIED HEREIN, RESPECTING THIS AGREEMENT OR THE EQUIPMENT, DOCUMENTATION, REPORTS, DESIGN PLANS, DRAWINGS, SPECIFICATIONS, OTHER DOCUMENTS AND SERVICES TO BE PROVIDED HEREUNDER OR THE DELIVERY, USE OR PERFORMANCE THEREOF.

5. CONTRACTOR'S PERFORMANCE

5.1. Contractor's Performance. Consultant does not, and cannot, warrant or guarantee that all of the Work performed by Contractor meets the requirements of Consultant's recommendations, the plans and specifications for the Work or the Contract Documents; nor can Consultant be responsible for Contractor's failure to perform the Work in accordance with the plans, specifications, Contract Documents or the recommendations of Consultant. Consultant will not supervise, direct or have control over the Work, nor will Consultant have authority over the responsibility for the means, methods, techniques, sequences or procedures selected by Contractor for the Project; for safety precautions and programs incident to the Work; nor for any failure of Contractor to comply with all applicable laws and regulations applicable to Contractor furnishing and performing its Work. Consultant shall not be liable for any failure of Contractor to complete its Work in accordance with the Contract Documents or with applicable laws and regulations.

5.2. Tests. Tests performed by Consultant on finished Work or Work in progress are taken intermittently and indicate the general acceptability of the Work on a statistical basis. Consultant's tests and observations of the Work are not a guarantee of the quality of other parties' work and do not relieve other parties from their responsibility to perform their work in accordance with applicable plans, specifications and requirements.

6. ESTIMATE OF REMEDIATION COSTS

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

7. CLIENT'S RESPONSIBILITIES

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

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

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

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

7.4. Relevant Information. Supply Consultant with all information and documents in Client's possession or knowledge which are relevant to Consultant's Services. Client warrants the accuracy of any information supplied by it to Consultant, and acknowledges that Consultant is entitled to rely upon such information without verifying its accuracy. Prior to the commencement of any Services in connection with a specific property, Client will notify Consultant of any known potential or possible health or safety hazards existing on or near the Project Site, with particular reference to Hazardous Materials or conditions.

7.5. Subsurface Structures. Correctly designate the location of all subsurface structures on plans to be furnished to Consultant, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s), and be responsible for any damage inadvertently caused by Consultant to any such structure or utility not so designated. Consultant is not liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities that were not correctly shown on plans furnished by Client to Consultant.

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

7.7. Notification to Authorities. Provide all required notifications to applicable Governmental Agencies, regulatory bodies or the public related to the existence, discharge, release, disposal, and/or transportation of Hazardous Materials.

8. CHANGED CONDITIONS

If Consultant discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), Consultant will notify Client in writing of the Changed Conditions. Client and Consultant agree that they will then renegotiate in good faith the terms and conditions of this Agreement. If Consultant and Client cannot agree upon amended terms and conditions within 30 days after notice, Consultant may terminate this Agreement and be compensated as set forth in Section 17.3, "Termination", within 10 days after Consultant's notice of termination.

9. CERTIFICATIONS

Client agrees not to require that Consultant execute any certification with regard to Services performed or Work tested and/or observed under this Agreement unless: 1) Consultant believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) Consultant believes that the Services performed or Work tested and/or observed meet the criteria of the certification; and 3) Consultant has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by Consultant is limited to an expression of professional opinion based upon the Services performed by Consultant, and does not constitute a warranty or guarantee, either expressed or implied.

10. ALLOCATION OF RISK

10.1 Limitation of Liability. *In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant to the Client for any and all claims, losses, damages of any nature whatsoever or claims expenses from any cause or causes, including reasonable attorney's fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant to the Client arising out of the Project shall total \$50,000, or the Consultant's total fee for Services on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or causes of action however alleged or arising, unless otherwise prohibited by law.*

10.2. Indemnification.

10.2.1. *Indemnification.* The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs,

including reasonable attorney's fees and defense costs (no duty to defend), to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors or consultants or anyone for whom the Client is legally liable.

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable.

10.2.2. Hazardous Materials Indemnification.

Except to the extent caused by Consultant's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from and against any and all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Materials.

10.3. Consequential Damages. Neither Client nor Consultant, nor their respective officers, directors, partners or employees, shall be liable to the other or shall make any claim for any incidental, indirect, special, exemplary, punitive, or consequential losses or damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict, express or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential and other damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.

10.4. Continuing Agreement. The indemnity obligations and the limitations of liability established under this Agreement will survive the expiration or termination of this Agreement. If Consultant provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the obligation of the parties to indemnify each other and the limitations on liability established under this Agreement apply to such Services as if the parties had executed an amendment.

11. INSURANCE

11.1. Consultant's Insurance. Consultant will obtain, if reasonably available, the following coverages:

11.1.1. Statutory Workers' Compensation / Employer's Liability Insurance;

11.1.2. Commercial General Liability Insurance with a combined single limit of \$1,000,000;

11.1.3. Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and,

11.1.4. Professional Liability Insurance in amounts of \$1,000,000 per claim and annual aggregate.

11.2 Contractor's Insurance. Client shall require that all Contractors and subcontractors for the Project name Consultant as an additional insured under their General Liability and Automobile Liability insurance policies. If Client is not the Project owner, Client will require the Project owner to require the project owner's Contractor to purchase and maintain General Liability, Builder's Risk, Automobile Liability, Workers' Compensation, and Employer's Liability insurance with limits no less than as set forth above, and to name Consultant and its subcontractors and subconsultants as additional insureds on the General Liability Insurance.

11.3. Certificates of Insurance. Upon request, Consultant and Client will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance, all policies required herein shall contain a waiver of subrogation.

12. OWNERSHIP AND USE OF DOCUMENTS

12.1. Client Documents. All documents provided by Client will remain the property of Client. Consultant will return all such documents to Client upon request, but may retain file copies of such documents.

12.2. Consultant's Documents. Unless otherwise agreed in writing, all documents and information prepared by Consultant or obtained by Consultant from any third party in connection with the performance of Services, including, but not limited to, Consultant's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar test documents (collectively "Documents") are the property of Consultant. Consultant has the right, in its sole discretion, to dispose of or retain the Documents.

12.3. Use of Documents. All Documents prepared by Consultant are solely for use by Client and will not be provided by either party to any other person or entity without Consultant's prior written consent. Except as set forth herein, neither Consultant nor Client will disclose, disseminate or otherwise provide such reports or information except as required for the completion of Contractor's work or the monitoring of the Project by Governmental Agencies.

12.3.1. Use by Client. Client has the right to reuse the Documents for purposes reasonably connected with the Project for which the Services are provided, including without limitation design and licensing requirements of the Project.

12.3.2. Use by Consultant. Consultant retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services and the right to use the Documents for any purpose.

12.4. Electronic Media. Consultant may agree at Client's request to provide Documents and information in an electronic format. Client recognizes that Documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration due to (among other causes) transmission, conversion, media degradation, software error, or human alteration. Accordingly, all Documents and information provided by Consultant in electronic media are for informational purposes only and not as final documentation. Unless otherwise defined in the SCOPE OF SERVICES, Consultant's electronic Documents and media will conform to Consultant's standards. Consultant will provide any requested electronic Documents for a 30 day acceptance period, and Consultant will correct any defects reported by Client to Consultant during this period. Consultant makes no warranties, either express or implied, regarding the fitness or suitability of any electronic Documents or media.

12.5. Unauthorized Reuse. No party other than Client may rely, and Client will not represent to any other party that it may rely on Documents without Consultant's express prior written consent and receipt of additional compensation. Client will not permit disclosure, mention, or communication of, or reference to the Documents in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material without Consultant's express prior written consent. Client waives any and all claims against Consultant resulting in any way from the unauthorized reuse or alteration of Documents by itself or anyone obtaining them through Client. Client will defend, indemnify and hold harmless Consultant from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained in Documents provided to such person or entity, published, disclosed or referred to without Consultant's prior written consent.

13. SAMPLES AND CUTTINGS

13.1. Sample Retention. If Consultant provides laboratory testing or analytic Services, Consultant will preserve such soil, rock, water, or other samples as it deems necessary for the Project, but no longer than 45 days after issuance of any Documents that include the data obtained from these samples. Client will promptly pay and be responsible for the removal and lawful disposal of all contaminated samples, cuttings, Hazardous Materials, and other hazardous substances.

13.2. Monitoring Wells. Client will take custody of all monitoring wells and probes installed during any investigation by Consultant, and will take any and all necessary steps for the proper maintenance, repair or closure of such wells or probes at Client's expense.

14. RELATIONSHIP OF THE PARTIES

Consultant will perform Services under this Agreement as an independent contractor. Nothing contained in this Agreement, or in the performance of Consultant and Client hereunder, is intended to benefit nor shall inure to the benefit of any third party.

15. ASSIGNMENT AND SUBCONTRACTS

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

16. SUSPENSION AND DELAYS

16.1. Procedures. Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by Consultant. Consultant may terminate this Agreement if Client suspends Consultant's Services for more than 60 days and Client will pay Consultant as set forth under section 17.3, "Termination." If Client suspends Consultant's Services, or if Client or others delay Consultant's Services, Client and Consultant agree to equitably adjust: (1) the time for completion of the Services; and (2) Consultant's compensation in accordance with Consultant's then current SCHEDULE OF CHARGES for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by Consultant for demobilization and subsequent remobilization.

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

17. TERMINATION

17.1. Termination for Convenience. Consultant and Client may terminate this Agreement for convenience upon 30 days written notice delivered or mailed to the other party.

17.2. Termination for Cause. In the event of a material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party. The termination notice shall state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 10-day period.

17.3. Payment on Termination. Following termination other than for a material breach of this Agreement by

Consultant, Client will pay Consultant for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the cost of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with Consultant's then current SCHEDULE OF CHARGES.

18. DISPUTES

18.1. Mediation. All disputes between Consultant and Client are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice.

18.2. Precondition to Other Action. No action or suit may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice.

18.3. Choice of Law; Venue. This Agreement will be construed with and governed by the laws of the Commonwealth of Virginia.

18.4. Statutes of Limitations. To the fullest extent permitted by law, no action, regardless of form, arising out of the Services under this Agreement, may be brought by either party more than two (2) years after the act or omission giving rise to a cause of action has occurred, except that an action for nonpayment against Client may be brought within two (2) years from the date of the last payment or the date of Consultant's original invoice for such service, whichever is later.

19. MISCELLANEOUS

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

19.2. Modification of this Agreement. This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

19.3. Notices. Any and all notices, requests, instructions or other communications given by either party to the other must be in writing and either hand delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this Agreement.

19.4. Headings. The headings used in this Agreement are for convenience only and are not a part of this Agreement.

19.5. Waiver. The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach.

19.6. Default. Notwithstanding any other provision contained in this Agreement, Client agrees to pay Consultant all reasonable expenditures incurred by Consultant in enforcing the terms of this Agreement including reasonable attorney's fees and court costs, if any.

End of General Conditions

