

Professional environmental services—General agreement with work order form.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN _____ AND _____

PROJECT: PROFESSIONAL ENVIRONMENTAL SERVICES

THIS AGREEMENT combines all understandings between the Parties regarding professional services for the Project named above and supersedes all prior proposals, quotations, solicitations, negotiations, representations, agreements or understandings, whether written or oral.

The performance of the professional services described here, as well as payment for such services, shall be on the terms and conditions presented in this Agreement and the following Sections and Exhibits which are attached and incorporated by reference which, taken together, shall constitute the whole Agreement.

Section 1 — Relationship of the Parties

Section 2 — Payment

Section 3 — General Provisions

Exhibit A — Sample Work Order

Exhibit B — Fee Schedule

IN APPROVAL, authorized representatives of the Parties to this Agreement have signed below. This Agreement shall become effective on the date of the last signature made.

CLIENT: _____

XYZ Co.

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SECTION 1.

RELATIONSHIP OF THE PARTIES

_____ ("*CLIENT*"), desires to have professional environmental services performed on various facilities as directed by CLIENT ("*Project*"). In furtherance of the Project, CLIENT hereby contracts with XYZ Co. ("*XYZ*") to perform these professional services. All services shall be performed under the supervision of CLIENT's Representative, _____ or a designee, identified in writing to XYZ by the CLIENT's Representative.

This Agreement anticipates the execution of various written Work Orders as in Exhibit A. Each such Work Order may modify the terms of this Agreement for purposes of the work described in the Work Order. Upon execution by the parties each Work Order shall become part of this Agreement.

This Agreement shall inure to the benefit of and be binding upon the successors, assigns and legal representatives of each of the Parties hereto. XYZ may contract with subcontractors as it considers necessary, but any other assignment or transfer of an interest in this Agreement by either Party without the written consent of the other shall be void.

XYZ shall perform all work under this Agreement as an independent contractor. Neither execution of this Agreement nor performance by the parties under this Agreement shall create any partnership, joint venture or agency relationship between the parties.

SECTION 2.

PAYMENT

Payment by CLIENT for professional services provided by XYZ shall be on time and expense basis and shall be based on the Fee Schedule included in Exhibit B to this Agreement. The Fee Schedule is modified periodically to reflect adjustments to salaries and costs of XYZ. Each modified Fee Schedule shall supersede the prior Fee Schedule for purposes of this Agreement upon its effective date which shall not be less than 30 days after notice to the client. Any such changes shall not effect Work Orders in progress.

Expenses payable shall include all costs to XYZ directly expended on the Project, excluding salary and overhead costs of XYZ. Expense charges shall include a management fee of 15 percent. Expenses shall also include costs of necessary subconsultants retained by XYZ. Other expenses may include but are not limited to out-of-town travel, meals and lodging, toll calls, computer charges, postage, photocopies and prints.

SECTION 3.

STANDARD TERMS AND ADDITIONS FOR HAZARDOUS MATERIALS CONTRACTS

3.1. PAYMENT CONDITIONS

XYZ periodically shall submit invoices to CLIENT. CLIENT shall pay each invoice within 15 days of the date of the invoice. However, if CLIENT objects to all or any portion of any invoice, CLIENT shall so notify XYZ of the same within 15 days from date of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. CLIENT shall pay an additional charge of one and one-half percent (1½%) of the amount of the invoice per month or the maximum percentage allowed by law, whichever is the lesser, for any payment received by XYZ more than 30 days from the date of invoice. In the event that an invoice for payment remains unpaid for more than 45 days from the date of invoice, XYZ shall have the right to cease performance of the services described and contracted for in this Agreement. XYZ will not incur any liability for damages of any type or nature due to the delay of the project as a result of stopping performance of services due to the failure of the CLIENT to pay for services rendered. In the event of a legal action brought by XYZ against CLIENT for invoice amounts not paid, attorneys' fees, court costs, arbitration costs and other related expenses shall be paid to the prevailing party by the other party.

3.2. ESTIMATED FEES

XYZ's estimates of fees are only estimated and shall not be regarded as "lump sum" or "fixed price" or "guaranteed maximum" compensation unless it is expressly so stated in writing in this Agreement.

3.3. GENERAL CLIENT RESPONSIBILITIES

The CLIENT shall provide all available information regarding the identity, nature, quantity, and location of hazardous waste or toxic materials at or on the site, all reports, data, maps, diagrams, studies, specifications and other documents or any information relating to hazardous or toxic wastes and surface or subsurface conditions at the site which would assist XYZ to perform its services under this Agreement, and any circumstances known to the CLIENT that would hinder XYZ's performance or make performance by XYZ more difficult or expensive than would ordinarily be expected. XYZ shall be entitled to rely on all client-provided documents and information in performing services under the Agreement; however, XYZ assumes no responsibility or liability for the accuracy or completeness of such documents or information.

The CLIENT, at its expense, shall obtain all permits or approvals from all state, federal, county, municipal or other government agencies or entities required to authorize or permit XYZ to perform work under this Agreement. CLIENT may have XYZ undertake this function within the terms of any Work Order. CLIENT shall indemnify, hold harmless and defend XYZ with regard to all claims, expenses, costs, damages or liabilities of any type or nature arising out of CLIENT's failure to obtain such permits or approvals. The CLIENT, at its expense, shall also provide XYZ with access to and egress from all property to which XYZ may require access to perform its services under this Agreement. If the CLIENT observes or otherwise becomes aware of any fault or defect in the Project or in the performance of XYZ, CLIENT shall promptly give written notice thereof to XYZ.

3.4. PROJECT SCHEDULE/DELAYS

Because of the uncertainties inherent in the services contemplated by this Agreement, time schedules are only estimated schedules which are subject to revision unless specifically agreed otherwise.

Neither party shall be deemed in default of this Agreement or any Work Order under this Agreement to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, strikes, or lock-outs, and changes in laws, statutes, regulations or ordinances.

If any such force majeure condition occurs and continues for a period of more than 14 days, then the party experiencing such condition shall give immediate written notice to the other party which may then elect to: (1) terminate the affected service requested or any part thereof, (2) suspend the affected service or any part thereof for the duration of the force majeure condition and resume performance once the force majeure condition ceases. Unless written notice is given within 30 days after being notified of the force majeure conditions, the other party shall be deemed to have elected option 2.

3.5. PROFESSIONAL RESPONSIBILITY

The services of XYZ under this Agreement shall be performed, within the limits prescribed by this Agreement as amended, in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants of the type used in this Project under similar circumstances. XYZ represents that it has the capability, experience and means required to perform the services contemplated by this agreement. No other representation, warranty, or guarantee, express or implied, is included or intended in this Agreement, or in any report, opinion, document or otherwise. XYZ agrees to indemnify and hold harmless CLIENT from and against any loss solely resulting from XYZ's failure to meet such standards of care and skill, subject to Paragraph 3.6.

3.6. LIMITATIONS OF LIABILITY

In recognition of the inherent risks associated with hazardous or toxic waste projects, CLIENT agrees that for any damage caused by a professional negligence, XYZ's liability, including that of its employees, agents and subcontractors, in the aggregate under this Agreement shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) or their total fees for the Project, whichever is less.

For any damage caused by negligence other than professional negligence, XYZ's liability, including that of its employees, agents and subcontractors, in the aggregate under this Agreement shall not exceed the limits of XYZ's comprehensive general, automobile liability insurance coverage, or other insurance policies.

In no event shall XYZ be liable for consequential damages, including, without limitation, loss of use or loss of profits, incurred by CLIENT or its subsidiaries or successors, regardless of whether such claim is based upon strict liability, breach of contract, breach of warranty, willful misconduct or negligent act or omission, whether professional or nonprofessional, of XYZ or its employees, agents or subcontractors.

XYZ and its consultants shall not be liable for damage or injury arising from damage to subterranean structures (pipes, tanks, telephone cables, etc.) which are not called to XYZ's attention and correctly shown on the plans furnished by the CLIENT in connection with work performed under this Agreement.

3.7. DISPOSAL AND HANDLING OF CONTAMINATED MATERIAL

It is understood and agreed that XYZ is not, and has no responsibility as, a handler, generator, operator, treater or storer, transporter or disposer of hazardous or toxic substances found or identified at a site, and that CLIENT shall undertake or arrange for the handling, removal, treatment, storage, transportation and disposal of hazardous substances or constituents found or identified at a site. CLIENT shall obtain in its name any required generator ID numbers.

XYZ shall make its own determination as to the precautions appropriate for any material; however, XYZ shall accept client's determination that any material is hazardous, whether or not the material meets the definition of a hazardous material or waste under applicable laws or regulations.

3.8. INDEMNIFICATION

To the fullest extent permitted by law, CLIENT shall indemnify, defend and hold harmless XYZ and its subcontractors, consultants, agents, officers, directors and employees from and against all liability, claims, damages, losses and expenses, whether direct, indirect or consequential, including but not limited to fees and charges of attorneys and court and arbitration costs, arising from the acts, omissions or work of others. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of XYZ. Without limiting the generality of the foregoing, the above indemnification provision extends to claims against XYZ which arise out of, are related to, or are based upon, the actual or threatened dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface of (a) soils, (b) water or watercourses, (c) objects, or (d) any tangible or intangible matter, whether sudden or not. Such indemnification shall not apply to claims, damages, losses or expenses which are finally determined to result from the sole negligence of or willful or reckless disregard by XYZ, its subcontractors or agents of their obligations under this Agreement.

3.9. OPPORTUNITY TO REMEDY

The parties agree that in the event of alleged error or omission by XYZ in performance of services under the Scope of Service, CLIENT shall notify XYZ promptly in writing of that fact and allow XYZ a reasonable time to remedy the problem. Upon notice, XYZ shall promptly review and remedy the problem at the cost of XYZ, if XYZ accepts responsibility for it. CLIENT agrees not to remedy the problem or to contract with a third party to remedy the problem at the cost of XYZ without first giving XYZ a reasonable opportunity to remedy the problem. Where responsibility for a problem may be shared by XYZ and others, XYZ shall endeavor to remedy XYZ's share at the cost of XYZ and to cooperate with others involved. If XYZ demonstrates that it is not at fault for a problem identified by the CLIENT under this Section, CLIENT shall reimburse XYZ for its costs of investigating the problem.

3.10. TERMINATION

Either party may terminate this Agreement for cause if the other commits a material, uncured breach of this Agreement. The party terminating shall send a written Notice of Termination to the other. The Notice of Termination shall contain specific reasons for termination. Termination shall not be effective if the breach has been remedied before expiration of the period specified in the Notice of Termination. Termination shall be effective 10 days from receipt of the Notice of Termination. No later than 30 days after termination, CLIENT shall pay XYZ upon invoice for

services performed and charges prior to termination, plus termination charges. Termination charges shall include, without limitation, charges for personnel, the putting of project documents and analyses in order, personnel and equipment rescheduling or reassignment adjustments, and all other related costs and charges incurred, directly attributable to termination. Copies of all work projects shall be delivered to the CLIENT at the time of termination, or as soon after as practical. Copies of work products incomplete at the time of termination shall be marked 'DRAFT-INCOMPLETE' and none shall be signed by XYZ. The CLIENT shall use any and all such incomplete documents and data at its own risk, and XYZ shall not be liable in any manner for the contents or use of any such incomplete work products. CLIENT shall indemnify, hold harmless and defend XYZ from and against any and all liability, claims, damages, losses and expenses of any type or nature asserted by any party as a result of use by CLIENT of such incomplete work.

3.11. WORK PROCEDURES

XYZ shall not specify work procedures, manage or supervise work for which it is not responsible under this Agreement, or implement or be responsible for health and safety procedures for persons other than its own employees, subcontractors and agents on or about the construction site; shall not be responsible for the acts or omissions of other parties on the Project; and shall not have control or charge of and shall not be responsible for work means, methods, techniques, sequences or procedures, or for safety precautions and programs for work performed by others with regard to the Project. XYZ's testing or inspection of portions of the work of other parties on a Project shall not relieve such other parties from their responsibility for performing their work in accordance with applicable plans and specifications.

3.12. ESTIMATED COSTS

Statements of probable cost or other cost estimates prepared by XYZ represent XYZ's judgment as a design professional familiar with the requirements of the Project. It is recognized, however, that neither XYZ nor the CLIENT has control over the cost of labor, materials, or equipment, over the Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, XYZ cannot and does not warrant or represent that proposals, bids, or actual costs will not vary from any statement of probable cost or other cost estimates or evaluations prepared by XYZ.

3.13. OWNERSHIP AND USE OF DOCUMENTS

Drawings and specifications and other documents relating to environmental studies and remedies, prepared by XYZ pursuant to this Agreement are the property of the CLIENT. They are not intended or represented to be suitable for reuse by the CLIENT or others on extensions of the Project. They shall not be used by the CLIENT, or given or sold by the CLIENT to be used by others, on other projects or extensions to this Project except by agreement in writing and with agreed upon appropriate additional compensation to XYZ. The CLIENT shall indemnify, hold harmless and defend XYZ from and against any and all liability, claims, damages, losses and expenses asserted by any party in any manner resulting from unauthorized use by CLIENT of XYZ-prepared drawings, specifications or other documents. All inventions, patents, design patents, and computer programs and copyrights relating thereto acquired or developed by XYZ in connection or relation to the Project shall remain the property of XYZ and shall be protected by the CLIENT from use by others except pursuant to agreement in writing between XYZ and CLIENT with agreed upon compensation to XYZ.

3.14. GOVERNING LAW

This agreement shall be governed by the law of the state where the work is to be performed.

3.15. DISPUTE RESOLUTION/ARBITRATION

In the event of a dispute in any manner relating to or arising out of this Agreement, the parties shall confer and negotiate in good faith within 10 days after the dispute arises to attempt to resolve the dispute. If a party fails to negotiate, or if the parties are unable to resolve the dispute themselves, then all claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration, arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by XYZ, the client, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under prevailing law.

Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

3.16. PRECEDENCE/INTEGRATION

This Agreement contains the final integrated agreement of the parties with regard to the subject matter of the Agreement. This Agreement shall not be modified except by a writing signed by all parties. The provisions of this Agreement shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding services under this Agreement, but specifically excluding Work Orders under this Agreement.

3.17. SEVERABILITY

If any provision or portion of this Agreement shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties to this Agreement. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

3.18. SURVIVAL

The provisions of this Agreement shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.

3.19. LITIGATION COMPENSATION

CLIENT acknowledges that in the event of litigation and/or governmental investigations regarding the presence or suspected presence of hazardous or toxic substances at the Project site, XYZ may be subpoenaed or otherwise compelled or called upon by parties to such litigation, or by local, state or federal agencies which may have regulatory responsibility for the site, to provide testimony, documents, information, or other materials or matters relating to history of the site, the nature of contamination of the site, risks associated with the site, costs of clean-up of the site, responsibility for contamination, alternative methods for clean-up, and other matters. CLIENT acknowledges and agrees that compensation paid to XYZ under this Agreement does not include compensation for such testimony or other involvement in said litigation or regulatory procedures relating to the site which might relate to or arise out of said litigation. CLIENT shall compensate XYZ for any and all cost, expense, obligation or damage arising out of such litigation or such regulatory procedures with regard to the site, including, but not limited to, personnel costs of all XYZ employees required to testify or provide information, documents or other materials (charged at XYZ's standard billing rates performed) and all out-of-pocket expenses for travel, duplication, telephone, telefax, and all other expenses reasonably and necessarily incurred by XYZ in the course of providing testimony, documents, information, or other materials or other matters relating to such litigation. In the event CLIENT requests XYZ to provide support of any type to CLIENT with regard to any litigation, XYZ shall not be required to provide such support unless XYZ and CLIENT shall agree in writing in advance as to compensation for XYZ personnel and XYZ's standard rates for forensic work and expense reimbursements to be paid by CLIENT to XYZ for such support.

3.20. PATENT PROTECTION

XYZ shall use its best efforts to provide services which do not infringe on any valid patent or involve the use of any confidential information that is the property of others unless XYZ is licensed to or otherwise has the right to use and dispose of the patent information. XYZ shall also use its best efforts to inform CLIENT of any patent infringement that may be reasonably expected to result from the use of the services. However, the best efforts of XYZ shall not include a duty to conduct and/or prepare a patent search and/or opinion. The liability of XYZ under this Agreement in any legal proceeding where CLIENT is made a defendant for actual patent infringement based upon a service provided by XYZ shall be limited to the compensation received for that service and shall exclude infringement which is related to manufacturing processes of CLIENT and any consequential damages.

3.21. CONFIDENTIALITY

Each party shall retain as confidential all information and data furnished to it by the other party which relate to the other party's technologies, formulae, procedures, processes, methods, trade secrets, ideas, improvements, inventions, and/or computer programs, which are designated in writing by such other party as confidential at the time of transmission and are obtained or acquired by the receiving party in connection with this Agreement, and shall not disclose such information to any third party.

However, nothing in this Agreement is meant to prevent nor shall it be interpreted as preventing either XYZ or CLIENT from disclosing and/or using such information or data (i) when the information or data is actually known to the receiving party before being obtained or derived from the transmitting party; or (ii) when the information or data is generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; or (iii) where the information or data is obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereof; or (iv) where a written release is obtained by the receiving party from the transmitting party.

EXHIBIT A.

WORK ORDER NUMBER _____

The following described work is authorized under the Agreement for Professional Services between the CLIENT and XYZ and shall amend that Agreement for the Scope of Work described in this Work Order and authorized under the above-mentioned Agreement.

SCOPE OF WORK

PAYMENT

Payment shall be in accordance with Section 2 of the Master Agreement under the following method:

A. Lump sum in the amount of \$ _____

B. Time and expense with an estimated budget of \$ _____

COMPLETION TIME (CALENDAR DAYS)

EXHIBIT B.

_____ FEE SCHEDULE [omitted]

APPROVED: _____

By: _____

Title: _____

DATE: _____

APPROVED: XYZ Co.

By: _____

Title: _____

DATE: _____