



BERG ♦ OLIVER ASSOCIATES, INC.

Environmental Science, Engineering & Land Use Consultants

14701 St. Mary's Lane, Suite 400, Houston, Texas 77079

(281) 589-0898 fax: (281) 589-0007

Houston ♦ Dallas/ Fort Worth ♦ WDBE/HUB ♦ www.bergoliver.com

March 21, 2012
(Revised May 8, 2012)

Fort Bend County Toll Road Authority
c/o WJ Interests, LLC
Attn: Mr. Bill Jameson
2333 Town Center Drive, Suite 100
Sugar Land, Texas 77478

via email: billj@wjinterests.com

Re: Proposal for a State Categorical Exclusion for the Fort Bend Toll Road Intersection Improvements at SH 6
BOA Proposal No. 8565ce

Dear Mr. Jameson:

Thank you for allowing Berg ♦ Oliver Associates, Inc. (Berg ♦ Oliver) to assist you with your needed environmental services. Our firm is quite interested in providing environmental services to WJ Interests, LLC on behalf of the Fort Bend County Toll Road Authority. We will give special attention to provide timely service and will begin immediately per your acceptance and execution of this proposal.

Please review the proposal/agreement and, if acceptable, execute the proposal and return to us. We look forward to working with you, Fort Bend Toll Road Authority, and WJ Interests, LLC on this project. Thank you for considering Berg ♦ Oliver Associates, Inc. to assist you with your environmental planning.

Please contact me if you have any questions, I can be reached at 281-589-0898.

Sincerely,

Susan Alford, REM
President

No. of Pages: 11

SERVICES TO BE PROVIDED BY BERG ♦ OLIVER ASSOCIATES, INC.
March 21, 2012

State Categorical Exclusion

PROJECT: Fort Bend Toll Road Intersection Improvements at SH 6
COUNTY: Fort Bend
CSJ: To Be Determined

INTRODUCTION AND PROPOSED SCOPE

This Proposal is between Fort Bend County Toll Road Authority and Berg ♦ Oliver Associates, Inc. (hereinafter called "Berg ♦ Oliver"), wherein Berg ♦ Oliver has been requested to provide the engineering (environmental) services described within this proposal.

WJ Interests, LLC is the selected engineering firm that will provide the engineering plans and designs. Berg ♦ Oliver's portions of the project will consist of the preparation of one (1) State Categorical Exclusion within the TxDOT right-of-way (ROW) along the Fort Bend Toll Road Intersection Improvements at State Highway 6.

This scope is prepared based on the TxDOT determination that a State Categorical Exclusion (CE) is the appropriate document for this project. A CE will be prepared for the facility and is intended to achieve the following objectives:

1. Define the scope of the project.
2. Determine which aspects of the proposed actions may have potential for environmental impact.
3. Identify measures and alternatives that might mitigate adverse environmental impacts.
4. Identify other environmental review and consultation requirements that should be prepared concurrently with the State Categorical Exclusion.

AUTHORIZATION

Work performed under this proposal will be authorized by the execution of this agreement by an authorized signatory of Fort Bend County Toll Road Authority.

LEGAL DESCRIPTION

This Scope of Services assumes that the legal description and the preliminary design, project location, and typical sections, for existing and proposed facilities, will be provided to Berg ♦ Oliver upon issuing the Notice to Proceed. Additional right-of-way may be required for this project.

SCOPE OF SERVICES

TASK A: PROJECT MANAGEMENT

Berg♦Oliver will attend up to three miscellaneous meetings, as necessary, for the successful completion of the project. This task also includes general project coordination and report preparation.

TASK B: STATE CATEGORICAL EXCLUSION

Berg♦Oliver will prepare a State Categorical Exclusion (CE) in accordance with TxDOT guidelines for construction within the TxDOT Right of Way (ROW). The CE will include a discussion on the purpose of the project and the existing environment. It will also identify and discuss the following:

- | | |
|--|-----------------------------------|
| A. Traffic Impacts (Vegetation & Wildlife) | I. Water Quality |
| B. Design Impacts | J. Hazardous Materials |
| C. Environmental Justice Impacts | K. Floodplain and Floodway |
| D. Biological Impacts | L. Farmland Protection Policy Act |
| E. Wildlife and Endangered Species Impacts | M. Invasive Species Impacts |
| F. Beneficial Landscape Practices Impacts | O. Migratory Birds Impacts |
| G. Impacts to Wetlands & Jurisdictional Waters | P. Construction Impacts |
| H. Historical and Archeological Resource Impacts | Q. Secondary/Cumulative Impacts |

The scope assumes one document is sufficient, no additional ROW is needed, and that no Meeting of Affected Property Owners is required. Alterations to the scope will require a supplemental agreement to be authorized by WJ Interests, LLC and Fort Bend County Toll Road Authority.

DRAFT AND FINAL REPORT PREPARATIONS

Berg♦Oliver will prepare three (3) preliminary "draft" reports of the categorical exclusion for review by Fort Bend County Toll Road Authority and WJ Interests, LLC. Upon draft review, Berg♦Oliver will incorporate all agreed upon changes to the preliminary draft, and three (3) "draft" reports of the CE will be forwarded to TxDOT-ENV for review. Upon TxDOT-ENV (through TxDOT – Houston District) review, four (4) final copies will be furnished to WJ Interests, LLC and Fort Bend County Toll Road Authority for the distribution to TxDOT-ENV. If additional report copies beyond four (4) are requested, they will be provided at a cost of seventy-five dollars (\$75.00) each, or cost plus twenty percent (20%), whichever is greater.

DELIVERABLES

In addition to the Final CE deliverable, as described above, Berg♦Oliver will also provide a draft Finding of No Significant Impacts (FONSI) letter, if requested.

PROJECT SCHEDULE

The draft CE is projected to be complete within sixty (60) working days of the receipt by Berg♦Oliver of this executed proposal/agreement from Fort Bend County Toll Road Authority and upon receipt of the preliminary design and typical sections from the engineer. The final CE is dependent upon receipt of comments from WJ Interests, LLC and TxDOT.

RIGHT OF ENTRY

The project completion schedule is the goal of all parties but does not reflect unusual delays due to major, unpredictable, or unforeseen delays, modifications to the scope of work based upon actual findings, or upon additional requests by governmental review, Fort Bend County Toll Road Authority, the Owner, or regulatory agencies.

Unless otherwise stated, it is assumed that the client has the authority to enter the property for purposes of conducting environmental assessments and herein grants that authority to Berg♦Oliver.

BASIC COMPENSATION AND METHOD OF PAYMENT

The work described in this proposal includes standard tasks that are usually required to complete the scope of the project. If a specific task is not necessary, as determined by Berg♦Oliver in consultation with the client and/or regulatory agency, it may not be performed in order to reduce charges to the client.

Berg♦Oliver proposes to provide the environmental services to Fort Bend County Toll Road Authority, on an hourly basis, not to exceed the following total:

Fifteen Thousand Dollars (\$15,000.00) *

** If this task requires more than a total of 110 hours of project management/mapping time, the extra hours will be billed as additional services, based on the attached rate schedule, but will not exceed 10% (\$1,500.00) without written approval from the client.*

Progress billing will be submitted monthly to the client. Payment will be due within forty-five (45) days from Fort Bend County Toll Road Authority. **Interest will accrue at the rate of 1.5% per month (18% per annum) if invoice is not paid in full according to this schedule.**

CONFIDENTIALITY OF ASSESSMENT

The assessment and all related work and services of Berg♦Oliver Associates, Inc. are confidential. Berg♦Oliver Associates, Inc. is hereby employed by Fort Bend County Toll Road Authority, pursuant to this contract. Under such contract relationship, all correspondence, written or oral, which relates to the findings of this study are, to the extent permitted by law, strictly confidential between the parties hereto, unless Berg♦Oliver Associates, Inc. receives a written request from the client to offer the results of this study to a third party not a part of this agreement/proposal. Environmental assessments may occasionally uncover extremely sensitive findings. It is the responsibility of Berg♦Oliver Associates, Inc. to report these findings to our client and to no other party.

PROPOSAL ACCEPTANCE AND EXECUTION


Acceptance of this proposal, including the "General Conditions for Services" found in Attachment C, will be indicated by the signatures below and will serve as authorization to proceed with the work proposed herein. The signatory below also represents that the client has, or has secured, the authority to grant permission for Berg♦Oliver Associates, Inc. personnel to enter the subject property as necessary to conduct these assessments and that such permission is granted to Berg♦Oliver Associates, Inc. by the execution of this agreement/proposal. If the client is a Corporation or a Partnership, then the signature below will also represent the personal guarantee of the individual signing on behalf of the Client.

IN WITNESS THEREOF, Fort Bend County Toll Road Authority, and Berg♦Oliver Associates, Inc. have accepted and executed this proposal for environmental services on this the 16th day of May, 2012.

**FORT BEND COUNTY TOLL
ROAD AUTHORITY**

By: 
Authorized Signature

BERG♦OLIVER ASSOCIATES, INC.

By: 
Susan Alford, REM
President

ATTACHMENT A



BERG ♦ OLIVER ASSOCIATES, INC.
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2012 PERSONNEL RATE SCHEDULE

<u>Personnel</u>	<u>Hourly Billing Rate</u>
Project Director/Principal	\$180.00
Senior Associate	\$160.00
Professional Engineer	\$160.00
Project Manager/Registered Environmental Manager	\$140.00
Professional Geologist	\$130.00
Health/Safety Officer/Chemist	\$130.00
Project Coordinator	\$120.00
Wetlands Biologist/Ecologist	\$115.00
Soil Scientist/Geologist	\$115.00
Senior GIS Analyst	\$110.00
GIS Analyst	\$100.00
Field Technician	\$80.00
In-House Technician/Administrator	\$75.00
CADD Sr. Analyst	\$95.00
CADD Analyst	\$75.00
Administrative/Word Processing	\$65.00
Specialist Subcontractors	Cost + 15%

Above rates include all normal expenses of BOA's business, including mailing charges, in-house photocopying, long distance telephone costs, in-house graphic systems, and local area travel, unless otherwise stated in the agreement. Expenses, such as travel beyond fifty (50) miles, outside photocopying, delivery charges, photographic reproduction, and other outside services, are considered reimbursable by the client at rate of cost +15%. Any extraordinary reimbursable expenses, in excess of \$250.00 must have authorization from the client.

NOTE: The rate schedule is for the current fiscal year, with an effective date of January 1. Hourly rates are adjusted annually as inflation dictates. If this contract spans more than one fiscal year (ending December 31), hourly rates may be adjusted. Regardless of any rate adjustment, the "not to exceed" figures in a contract will not change.

ATTACHMENT B
GENERAL CONDITIONS FOR SERVICES

These General Conditions are a part of each agreement between Berg ♦ Oliver Associates, Inc. and its client for the performance of services. Berg ♦ Oliver Associates, Inc. is identified as "BOA". The party for whom the services are performed is identified as "Client", and the written agreement between the parties, including these General Conditions, is called "this Agreement".

Article 1: Services by BOA

1.1 Scope of services standard of care. BOA will perform the scope of services expressly described in this Agreement, after it is signed by both parties. The services performed by BOA will be conducted in a manner consistent with the degree of care and skill ordinarily exercised by reputable companies performing the same or similar services in the same locale acting under similar circumstances and conditions.

1.2 Restoration. BOA will exercise reasonable care to minimize damage to the site. However, Client acknowledges that some damage may occur in the normal course of performing the services, even if due care is exercised, and agrees that BOA will not be liable for such damage and will be entitled to additional compensation if it is asked to perform restoration services not expressly included in the scope of services.

1.3 Reports and Investigations. If BOA's performance of the services includes assessment, identification, or testing services, the number of investigations and observations BOA makes, the number of samples it collects, or the number of tests it performs are necessarily limited by budgetary and time constraints, and observations and samples by their specific locational nature may not exactly represent similar samples or observations in the immediate vicinity. BOA **does not** guarantee that all violations, problems, or sources of possible environmental condition will be identified, that all contaminants or environmental condition will be detected/identified, or that requirements, standards, or conditions will not change over time. Any report issued by BOA will set forth its findings and conclusions based on the limited information available from the observations, investigations, sampling, and/or testing conducted under this Agreement. In preparing its report, BOA may review and interpret information provided by Client, third parties, and regulatory agencies and will be entitled to rely on the accuracy of such information, including laboratory results, without performing an independent verification. BOA may include in its report a Statement of Limitations describing the limitations of its investigations and findings and indicating that the report is for Client's use only and will not be relied upon by any third party, except as expressly agreed in writing by BOA, and then only at such third party's own risk.

1.4 Documents. All reports and documents prepared and deliverable to Client pursuant to this Agreement will become Client's property upon full payment to BOA. BOA may retain file copies of such deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, and other documents and computerized materials prepared by BOA are instruments of BOA's services and will remain BOA's property. All deliverables provided to Client are for Client's use only for the purposes disclosed to BOA, and Client will not transfer them to others or use them or permit them to be used for any extension of the services or any other project or purpose, without BOA's express written consent.

1.5 Services not included. Unless expressly included in the scope of services, BOA's services will not include the following: (a) the detection, removal, treatment, transportation, disposal, monitoring, or remediation of any contamination of soil or groundwater at the site by petroleum or petroleum products (collectively called "oil") or hazardous, toxic, radioactive, or infectious substances, including any substances regulated under RCRA or any other federal, state, or local environmental laws, regulations, statutes, rules, standards, or ordinances (collectively called "Hazardous Materials"); (b) mechanical compaction of backfill; (c) dewatering before installation or filling tanks with liquid or ballast following installation; (d) pump-out or disposal of product, water, or other contents from existing tanks; (e) installation of anchor systems, foundations, shoring, or other support devices; (f) concrete, blacktop, water, sewer, electricity, or other outside services; (g) the removal of any soil or water; (h) installation of protective fencing or other structure; or (i) construction or monitoring. BOA will be entitled to additional compensation if it is asked to perform or provide such services listed above. BOA will not be responsible for damage to or imperfections in any concrete slabs it installs unless they are protected by Client from traffic for seven days.

1.6 Estimates. Any estimates of probable construction or implementation costs, financial evaluations, feasibility studies, or economic analyses prepared by BOA will represent its best judgement based on its experience and available information. However, Client recognizes that BOA has no control over costs of labor, materials, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, BOA does not guarantee that proposals, bids, or actual costs will not vary from opinions, evaluations, or studies submitted by BOA.

1.7 Other Contractors. Except to the extent expressly agreed in writing, BOA will not have any duty or authority to direct, supervise, or oversee any contractors of Client or their work or to provide the means, methods, or sequence of their work or to stop their work. BOA's services and/or presence at a site will not relieve others of their responsibility to Client or to

others. BOA will not be liable for the failure of Client's contractors or others to fulfill their responsibilities. **1.8 Litigation support.** BOA will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event BOA is required to respond to a subpoena, government inquiry, or other legal process related to the services in connection with a proceeding to which it is not a party, Client will reimburse BOA for its costs and compensate BOA at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

1.9 Warranty. If manufactured products are purchased by BOA and furnished to Client or incorporated into the work, BOA will assign to Client any warranties provided by the manufacturer, to the extent they are assignable, and Client's sole resource will be against the manufacturer. NO FURTHER WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. Full risk of loss of materials and equipment furnished by BOA will pass to Client upon their delivery to Client's premises, and Client will be responsible for protecting them against theft and damage. However, until BOA is paid in full, it will retain title for security purposes only and the right to repossess the materials and equipment.

Article 2: Responsibilities of Client

2.1 Client requirements. Client, to the best of its ability, without cost to BOA, will:

- (a) Designate to BOA a person to act as Client's representative;
- (b) Provide or arrange for access and make all provisions for BOA to enter any site where services are to be performed;
- (c) Furnish BOA with all reasonably available information pertinent to the services;
- (d) Furnish BOA with a legal description of the site and all available surveys, site plans, and relevant information about site conditions, topography, boundaries, easements, zoning, land use restrictions, and right-of-ways, if available and as needed;
- (e) Furnish BOA with all approvals, permits, and consents required for performance of the services except for those BOA has expressly agreed in writing to obtain;
- (f) Notify BOA promptly of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Material, and of any OTHER CONDITIONS REQUIRING SPECIAL CARE, and provide BOA with any available documents describing the quantity, nature, location, and extent of such materials, contamination, or conditions;
- (g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices BOA has expressly agreed in writing to give;
- (h) Before commencement of any drilling or excavation at a site, furnish BOA with a complete description (to the best of their ability) of all underground objects and structures at the site, including, but not limited to, wells, tanks, and utilities.
- (i) Provide BOA with information concerning prior owners of the site and any current or historical uses of or activities on the site by Client, prior owners, or others, as needed;
- (j) Furnish to BOA any known contingency plans related to the site;
- (k) Furnish to BOA any previous environmental audits and/or assessments related to the site.

2.2 Hazards. Client represents and warrants that it does not have any knowledge of Hazardous Materials or Oil, or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials except as expressly disclosed to BOA in writing.

2.3 Confidentiality. Client acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to BOA and agrees not to disclose it or otherwise make it available to others without BOA's express written consent unless otherwise required by law.

2.4 Health and safety. Client acknowledges that it is now and will at all times remain in control of the project site. Except as expressly provided herein, BOA will not be responsible for the adequacy of the health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. BOA will not be responsible for inspecting, observing, reporting, or correcting health or safety conditions or deficiencies of Client or others at Client's site. So as not to discourage BOA from voluntarily addressing health or safety issues while at Client's site, in the event BOA does address such issues by making observations, reports, suggestions, or otherwise, BOA will nevertheless have no liability or responsibility arising on account thereof.

Article 3: Changes; Delays; Excused Performance

3.1 Changes. Unless this Agreement expressly provides otherwise, BOA's proposed compensation represents its best estimate of the costs, effort, and time it expects to expend in performing the services based on its reasonable assumption of the conditions and circumstances under which the services will be performed including, but not limited to, those stated in Section 3.2. As the services are performed, conditions may change or circumstances outside BOA's reasonable control (including changes of law or regulatory policy) may develop that would require BOA to expend additional costs, effort, or time to complete the services, in which case BOA will notify Client, and an equitable adjustment will be made to BOA's compensation.

In the event conditions or circumstances require the services to be suspended or terminated, BOA will be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

3.2 Assumptions. Unless specified in writing, BOA's compensation is based on the assumption that: (a) there is no impact spoil or excavation of natural resources on or adjacent to the site that has not been disclosed to BOA by the client; (b) there is no contamination of soil or groundwater at the site by Oil or Hazardous Materials that has not been disclosed to BOA by Client, (c) BOA will not encounter any underground structures, utilities, boulders, rock, water, running sand, or other unanticipated conditions in the course of drilling or excavation; (d) tank installations will not require dewatering by BOA; and (e) if BOA's scope of services includes services related to petroleum facilities or storage tanks, groundwater will not cause tanks to float or require the use of Ballast. BOA will be compensated for any additional efforts expended or costs incurred in addressing such conditions.

3.3 Force majeure. BOA will not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority to timely review or to approve the services or to grant permits or approvals, or any other cause beyond BOA's reasonable control. In the event of such delay or failure, the time for performance will be extended by a period equal to the time lost plus a reasonable recovery period, and the compensation will be equitably adjusted to compensate for any additional costs BOA incurs due to any such delay.

3.4 Disputes. If any claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve it equitably through negotiation or, if that fails, through nonbinding mediation under the rules of the American Arbitration Association, before having recourse to the courts. However, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitation, and BOA may pursue no liens on public property rights it may have to obtain security for the payment of its invoice.

Article 4: Compensation

4.1 Rates. Unless otherwise agreed in writing, BOA will be compensated for its services at its standard rates and will be reimbursed for costs and expenses (plus reasonable profit and overhead) incurred in its performance of the services.

4.2 Invoices. BOA may invoice Client on a monthly or other progress billing basis. Invoices are due and payable upon receipt by Client. On amounts not paid within 45 days of invoice date, Client will pay interest from invoice date until payment is received at the lesser of 1.5% per month or the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it will notify BOA in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and will pay the portion not in dispute.

4.3 Suspension, etc. BOA may suspend or terminate the services at any time if payment is not received when due and will be entitled to compensation for the services previously performed and for costs reasonably incurred in connection with the suspension or termination.

4.4 Taxes, etc. Except to the extent expressly agreed in writing, BOA's fees do not include any taxes, excises, fees, duties, or other government charges related to the goods or services provided under this Agreement, and Client will pay such amounts or reimburse BOA for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption or direct payment permit, it will provide BOA with a valid exemption or permit certificate. Confirm that we have provided tax-exempt certificate.

Article 5: Insurance and Allocation of Risk

5.1 Insurance. During the performance of the services, BOA will maintain the following insurance:

Workers' Compensation	Statutory limits
Employers' Liability	\$1,000,000 each accident
Commercial General	\$1,000,000 per occurrence & aggregate
Automobile Liability	\$1,000,000 per occurrence & aggregate
Professional Liability	\$1,000,000 per claim & aggregate

BOA shall procure and maintain throughout the term of this Agreement, at its sole cost and expense, insurance of the

types and in the minimum amounts set forth in this Agreement. BOA, and not the Client, shall be responsible for paying the premiums and deductibles, if any, that may from time to time be due under all of the insurance policies required of BOA. BOA shall obtain required insurance from such companies having a Bests rating of B+/VII or better and licensed or approved to transact business in the State of Texas. The Client and the Client's agents and employees shall be added as additional insureds to all coverages required under this Agreement, except for worker's compensation insurance and professional liability insurance. All policies written on behalf of BOA shall contain a waiver of subrogation in favor of the Client and the Client's agents and employees, with the exception of professional liability insurance. In addition, all of the aforesaid policies shall be endorsed to provide that they are primary coverages, and not in excess of any other insurance available to the Client, and without rights of contribution or recovery against the Client or from any such other insurance available to the Client.

BOA shall furnish to the Client certificates of insurance and any endorsement required hereunder issued by the insurance carrier evidencing compliance with the insurance requirements hereof. Certificates shall list BOA, the name of the insurance company, the policy number, the term of coverage, and the limits of coverage. BOA shall cause its insurance companies to provide the Client with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or nonrenewal of the insurance coverage required under this Agreement.

5.2 BOA indemnification. For separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and subject to the limitations set forth in paragraph 5.4, BOA agrees to indemnify, hold harmless, and defend Client from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures and suits, together with reasonable attorneys' and witness' fees and other costs and expenses of defense and settlement, which Client may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any person, destruction or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any damages claimed by third parties (collectively, "Damages") to the extent arising in whole or in part out of BOA's violation of law or breach of this Agreement or out of the negligence or willful misconduct of BOA, its other contractors, agents, suppliers, or employees.

5.3 Employee injury. Client agrees not to impede or to bring an action against BOA based on any claim or personal injury or death occurring in the course or scope of the injured or deceased person's employment with BOA and related to the services performed under this Agreement.

5.4 Defense. Any defense of BOA required to be provided by Client under this Agreement will be with counsel selected by BOA and reasonably acceptable to Client.

Article 6: Hazardous Materials Provisions

6.1 Hazardous Materials. Except to the extent expressly agreed in writing, BOA's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal, or treatment of petroleum or petroleum products (collectively called "Oil") or of any hazardous, toxic, radioactive, or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a site where BOA is to perform services or of contamination of the site by Oil or Hazardous Materials not previously disclosed to BOA in writing will entitle BOA to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed. In no event will BOA be required or construed to take title, ownership, or responsibility for such Oil or Hazardous Materials.

6.2 Manifests. In the event that the scope of services includes the remediation of any Oil or Hazardous Materials, before BOA removes from a site any Oil or Hazardous Materials, Client will sign any required waste manifests in conformance with all DOT and other government regulations, listing Client as the generator of the waste. If someone other than Client is the generator of the waste, Client will arrange for such other person to sign such manifests. BOA will not directly or indirectly assume title to or own or be deemed to possess any materials handled or removed from any site, including Oil or Hazardous Materials. Nothing in this Agreement will be construed to make BOA a "generator" as defined in RCRA or any similar laws governing the treatment, storage, or disposal of waste. Except to the extent BOA's responsibilities expressly include identification of the waste, Client will provide waste material profiles, which accurately characterize the waste. If the services include transportation of Hazardous Materials or Oil, BOA may evaluate and recommend possible disposal sites for Client's use. However, under RCRA and CERCLA, the client, as generator, has ultimate responsibility for selection of the disposal site. Client acknowledges and agrees that it will evaluate and select the proper disposal site and be solely responsible therefore.

6.3 Hazardous Materials acknowledgement. Client acknowledges that BOA does not have any responsibility for preexisting Oil and Hazardous Materials at the site, any resultant contamination there from, or, except as expressly agreed in writing, for previous detection, monitoring, handling, storage, transportation, disposal, or treatment, that BOA's compensation is not commensurate with the unusually high risks associated with such materials, and that insurance is not reasonably available to

protect against such risks.

Article 7: Miscellaneous Provisions

7.1 Confidential information. Although BOA generally will not disclose without Client's consent information provided by Client or developed by BOA in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in BOA's possession, or obtained from third parties), BOA will not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property, or welfare of human beings. BOA will advise Client (in advance, except in emergency) of any such disclosure.

7.2 Notices. Notices between the parties will be in writing and will be hand delivered or sent by certified mail or acknowledged telefax properly addressed to the appropriate party.

7.3 Assignment, etc. Neither the Client nor BOA will assign or transfer any rights or obligations under this Agreement, except that BOA may assign this Agreement to its affiliates upon written notice to the District and may use subcontractors in the performance of its services. Nothing contained in this Agreement will be construed to give any rights or benefits to anyone other than the Client and BOA, without the express written consent of both parties. The relationship between Client and BOA is that of independent contracting parties, and nothing in this agreement or the parties' conduct will be construed to create a relationship of agency, partnership, or joint venture.

7.4 Governing law and Headings. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The headings in this Agreement are for convenience only and are not a part of the agreement between the parties.

7.5 Entire agreement. This Agreement supersedes all prior agreements and, together with any work release document issued under this Agreement and signed by both parties, constitutes the entire agreement between the parties. Any amendments to this Agreement will be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order, or other document provided by Client modify or amend this Agreement, even if it is signed by BOA, unless BOA signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings, which comprise this Agreement, the other writings will take precedence.

7.6 Survival. All obligations arising prior to this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties will survive the completion of the services and the termination of this Agreement.