

FORT BEND COUNTY FY 2010 **AGENDA ITEM**
COMMISSIONERS COURT AGENDA REQUEST FORM
Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office 3/C

Date Submitted: 11/09/2009

Submitted By: P. Batts

Court Agenda Date: 11/17/2009

Department: Engineering

Phone Number: 281 633 7507

SUMMARY OF ITEM: Take all appropriate action to approve the Supplemental Agreement No. 1 between Fort Bend County and Burk-Kleinpeter, Inc. regarding Trammel-Fresno Road for the contract to be increased by \$16,075.00 for a grand total of the contract to be \$877,494.20, Mobility Bond Project #746, Precincts 1&2. (Fund: Mobility Bonds)

RENEWAL AGREEMENT/APPOINTMENT

YES ☐ NO ☐

REVIEWED BY COUNTY ATTORNEY'S OFFICE:

YES ☐ NO ☐

FINANCIAL SUMMARY:

BUDGETED ITEM: YES ☐ NO ☐

FUNDNG SOURCE: Accounting Unit:
Activity (If Applicable):

Account Number:

DESCRIPTION OF LAWSON ACCOUNT: _____

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office ☐ (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input type="checkbox"/> Auditor (281-341-3774)	<input type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input type="checkbox"/> Budget Officer (281-344-3954)	<input type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input type="checkbox"/> Information Technology (281-341-4526)	<input type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Other:	<input type="checkbox"/> County Atty (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

**CONTRACT FOR ENGINEERING SERVICES
SUPPLEMENTAL AGREEMENT NO. 1**

STATE OF TEXAS §
COUNTY OF FORT BEND §

THIS SUPPLEMENTAL WORK AUTHORIZATION to contract for engineering services is made by and between Fort Bend County acting by and through the Fort Bend Commissioners Court, hereinafter called the "County", and Burk-Kleinpeter, Inc., hereinafter called the "Engineer", and becomes effective when fully executed by both parties.

WITNESSETH

WHEREAS, the County and the Engineer executed a contract on April 1, 2008 concerning Trammel Fresno Road; and,

WHEREAS, Section II, Compensation, limits the amount payable of the contract to \$861,419.20; and,

WHEREAS, Attachment B, Services Provided by the Engineer, details the Scope of Services; and,

WHEREAS, it has become necessary to amend the contract;

AMENDMENT

NOW THEREFORE, premises considered, the County and the Engineer agree that said contract is amended as follows:


The maximum amount payable of the contract is increased by \$16,075.00 to a total of \$877,494.20

The Services Provided by the Engineer have been amended, included as Attachment A, to add wetland delineation tasks to meet the current USACE requirements.

All other provisions are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the County and the Engineer have executed this supplemental agreement in duplicate.

THE ENGINEER
Burk-Kleinpeter, Inc.



(Signature)
Ken Stanley

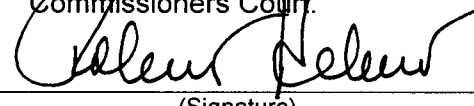
(Printed Name)
Director - Houston Ops.

(Title)
November 3, 2009

(Date)

FORT BEND COUNTY

Executed and approved by Fort Bend County
Commissioners Court.



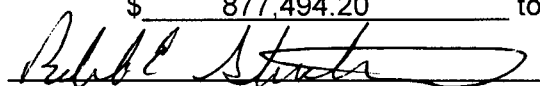
(Signature)
Honorable Robert E. Hebert

(Printed Name)
County Judge

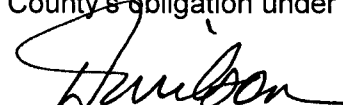
(Title)
11-17-09

(Date)

Auditors Certificate: I hereby certify that funds are available in the amount of
\$ 877,494.20 to pay Fort Bend County's obligation under this contract.



Ed Sturdivant, County Auditor

Attest: 

Dianne Wilson, County Clerk

ATTACHMENT A

BURK-KLEINPETER, INC.

ENGINEERS, ARCHITECTS, PLANNERS, ENVIRONMENTAL SCIENTISTS

6420 RICHMOND AVE. SUITE 675

HOUSTON, TEXAS 77057

(VOICE) 713 892 5901 (FAX) 713 892 5908

WWW.BKIUSA.COM



OVER 99 YEARS OF SERVICE

September 23, 2009

Jesse Hegemier, P.E.
Ft. Bend County Engineer

c/o David Balmos, PE
Klotz Associates
1160 Dairy Ashford, Suite 500
Houston, Texas 77079

Re: Trammel Fresno Road – Project 746
BKI Project 4041
Proposal for Additional Services - Wetlands Delineation

Dear Mr. Balmos:

As previously discussed I am submitting this proposal for your consideration to perform additional services required to complete the environmental documentation for this project. This request is for an increase in the Environmental Documents task fee of \$16,075.00.

The original basis of the environmental work anticipated using the delineation work performed during the PER stage in 2004/2005 and incorporating those results into the Categorical Exclusion documents. In December 2008 the USACOE officially issued revised procedures for Jurisdictional Determination and in February 2009 they issued a Delineation Supplement that altered the primary determining factors for identifying waters of the U.S. At a meeting held on May 20, 2009 the TxDOT Environmental Section informed the design team that the existing delineation work was no longer valid and a new delineation conducted in accordance with the new guidelines was required.

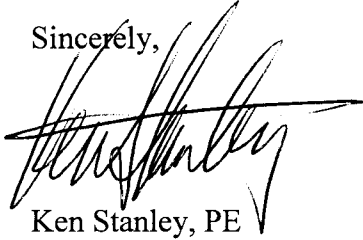
BKI has solicited a proposal from Berg-Oliver Associates, Inc. for the updated wetlands delineation required for this project. Attached is the proposed scope of services and fee assembled by Berg-Oliver. This scope has been reviewed by TxDOT and they have concurred the scope satisfies their requirements for the project documentation.

We are prepared to begin this work upon your authorization. If you have any questions or need additional information please feel free to call me.

BURK-KLEINPETER, INC.

ENGINEERS, ARCHITECTS, PLANNERS, ENVIRONMENTAL SCIENTISTS

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Stanley', with a long horizontal stroke extending to the right.

Ken Stanley, PE
Director – Houston Operations

cc: files
Paul Waidhas

P:\4xxx\4041 - Trammel Fresno Design Phase\01\02 - Correspondence\General\LTR-FBC Klotz Prop for Wetlands Delineation 09-23-09.doc



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

September 3, 2009

Mr. Ed Elam
Burk-Kleinpeter, Inc.
4176 Canal Street
New Orleans, LA 70119

Via Email: Eelam@bkusa.com

Re: Proposal for a Wetland Delineation, USACE Verification, and Permit Determination and CE
Insert
BOA Project #7403espr

Dear Mr. Elam:

The following proposal is provided to Burk-Kleinpeter, Inc. for environmental services for an approximate 2 mile (up to 160 feet wide) ROW, located west of Fort Bend Parkway to the FM 521 intersection, in Fort Bend County, Texas. Berg♦Oliver Associates, Inc. (Berg♦Oliver) will provide special attention to complete the work in a timely and professional manner. We will begin the assessment upon your acceptance and execution of this proposal.

Berg♦Oliver Associates, Inc. is proposing to provide the following services: Task I) Wetland Delineation, Task II) USACE Verification, and Task III) Permit Determination and CE insert. Attachment A describes each service.

PROJECT SCHEDULE

Task I (Wetland Delineation) is anticipated to be complete within thirty (30) calendar days of the receipt of an executed proposal and boundary survey/plat, or other suitable boundary map, by Berg♦Oliver. Task II (Verification) will be submitted to the USACE following completion of Task I and its approval is dependent upon the schedule of the USACE. Task III will be completed within sixty (60) calendar days and can be performed concurrently with Task I.

The project completion schedule is the goal of all parties; it does not, however, reflect unusual delays due to forces beyond the control of Berg♦Oliver and/or modifications to the scope of work based upon actual findings or additional requests by Burk-Kleinpeter, Inc., its agents, or governmental agency.

Berg♦Oliver Associates, Inc.
BOA project number 7403espr
September 3, 2009

RIGHT OF ENTRY

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 below 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 described in Attachment A to Burk-Kleinpeter, Inc. on an hourly basis, not to exceed the following totals:

TASK I: WETLAND DELINEATION..... \$10,850.00 *

TASK II: USACE VERIFICATION..... \$2,750.00 **

TASK III: PERMIT DETERMINATION AND CE INSERT..... \$2,475.00

GRAND TOTAL.....\$16,075.00***

** This amount is based upon the property having clear access for delineation so that field work can be completed in two (2) days or less by a two-man crew. This task includes 86 hours of Project Management/Mapping time. Extraordinary circumstances, such as regulatory agency reviews based upon recent policy changes, may require additional tasks or further detailed analysis not covered in the present scope of work. If this task requires more than a total of 86 hours of Project Management/Mapping time, a change order for additional services will be presented to the client.*

*** This amount is based upon the property having clear access for the verification so that field work can be completed in one (1) day or less by a one-man crew meeting with the USACE. For each additional day (8 hours) of field work by a one-man crew, the amount will increase \$1,200.00 extra per day.*

**** Overage in one task may be applied against underages in another task. The total amount of the tasks, however, will not exceed this Grand Total, unless a change order is submitted and approved.*

This cost estimate is valid for a period of six (6) months beyond the date shown below. After six (6) months, cost estimates may change due to fluctuations in fuel, subcontractors, and other sources required to complete the project.

Berg ♦ Oliver will begin the work described herein upon the execution of this proposal by the client. Invoices for all hourly work will be submitted monthly and will be based upon the attached Rate Schedule in Attachment B. Payment of all invoices is expected within thirty (30) days of the client's receipt of the invoice submitted by Berg ♦ Oliver.

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 Burk-Kleinpeter, Inc. 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 the authorizing client and to no other party.

PROPOSAL ACCEPTANCE AND EXECUTION

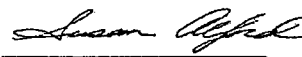
Acceptance of this proposal, including the "General Conditions for Services" found in Attachment C, will be indicated by the signatures below and will serve as authorization to proceed with the work proposed herein. The signatory below also represents that the client has, or has secured, the authority 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, Burk-Kleinpeter, Inc. and Berg ♦ Oliver Associates, Inc. have accepted and executed this proposal for environmental services on this the _____ day of _____, 2009.

BURK-KLEINPETER, INC.

By: _____
Authorized Signature

BERG ♦ OLIVER ASSOCIATES, INC.

By: 
Susan Alford
President

Berg ♦ Oliver Associates, Inc.
BOA project number 7403espr
September 3, 2009

ATTACHMENT A

TASK I WETLAND DELINEATION SCOPE OF WORK

The objective of the Delineation is to evaluate any portion of the site to be classified as a "Jurisdictional Water of the United States" as defined in 33 CFR 328 and subject to USACE jurisdiction. The delineation will be conducted according to the 1987 United States Army Corps of Engineers Wetland Delineation Manual, the December 2008 Rapanos Guidance for Jurisdictional Determination, and the 2009 Atlantic and Gulf Coast Plain Delineation Supplement. The recent guidance and supplemental criteria have altered the primary determining factors for identifying waters of the United States. However, compliance with these criteria requires a significant increase in the documentation and scientific evaluation.

Delineation work will consist of the following tasks:

Task 1: Review of NRCS Soil Surveys: Task 1 will include a review of previously published soil data published by the U.S. Department of Agriculture, NRCS, to determine the types of surface soils expected to be confirmed by on-site soil analysis.

Task 2: Review of Aerial Photographs: Task 2 will include a review of historical aerial color and black/white photographic enlargements for selected years. Infrared color photographs will be analyzed for the presence of wetland signature color distortions. Information for all photographic interpretation will be compared to locate recurring sites where wetland signatures are present.

Task 3: Site Reconnaissance for Wetland Indicators: Task 3 will include inspecting the property under the field procedures outlined in the Corps of Engineers Wetland Delineation Manual – Technical Report Y-87-1, the Rapanos Guidance for Jurisdictional Determination (December 2008), and the 2009 Atlantic and Gulf Coast Plain Delineation Supplement.

Transects are required for tracts greater than 5 acres in size, unless negotiated with the USACE to forego transects based on the homogeneous landscape and habitat type. If necessary, transects will be performed across the property, perpendicular to the nearest watercourse. Samples of vegetation, soils, and hydrology indicators will be taken at each change in topography or vegetation. Vegetation species will be recorded within a thirty (30) foot radius of each sample area. Upland vegetation will also be verified, for it is as significant as wetland vegetation in the determination process. Inspection of the property for evidence or lack of wetland hydrology and surface connection to permanent or semi permanent water bodies and/or navigable waters per the December 2008 Rapanos Guidance for Jurisdictional Determination will be performed at each sample area. Soil samples will be evaluated at each test site for their hydric and non-hydric characteristics. Non-hydric soils verify upland status and are as significant as hydric soils in the determination process. The eight (8) page Jurisdictional Determination/Significant Nexus evaluation will be performed for all areas determined to be adjacent, per the December 2008 guidance.

Task 4: Demarcation of Wetland Areas: Task 4 will include the flagging of the jurisdictional wetland areas and/or the ordinary high water mark for location by GPS. Location of the areas by GPS survey using the USACE October 2003 Standard Operating Procedures is required for USACE verification/permitting and is recommended for project planning.

Task 5: Preparation Of a Map Representing Wetland Area: Upon receipt of the GPS wetland areas and the limits of the Jurisdictional Waters, information regarding the field location of the boundaries of all Section 10 and 404 waters/wetland limits within the property boundaries will be plotted on a scaled map. Each Jurisdictional area will be depicted with the following information: (1) size and shape; (2) surface area calculation (acres); and (3) combined total wetland and Jurisdictional Water area calculations for the entire subject tract. The final report submitted to the client from Berg ♦ Oliver will reflect the surveyed data from the GPS survey showing the location of the wetlands.

Task 6: Report Preparation: Task 6 will include the preparation of a final report. Upon completion of the site reconnaissance, data translation, and map preparation, a report will be completed, two copies of which will be given to the client. The report will include a discussion of methodology used to delineate the tract, site findings, copies of all historical information reviewed, such as USGS topographical maps, NRCS soil survey maps, aerial photographs, site photographs, USACE routine data sheets, and a wetland delineation map.

TASK II USACE VERIFICATION SCOPE OF WORK

A U.S. Army Corps of Engineers Verification of the Wetland Delineation performed by Berg ♦ Oliver is recommended. The Verification includes a site visit with USACE personnel to inspect the property under the field procedures outlined in the Corps of Engineers Wetland Delineation Manual – Technical Report Y-87-1 and Regional Supplement. Upon written or oral authorization from the client, Berg ♦ Oliver will submit the Wetland Verification request to the USACE and coordinate a site visit to verify the findings. Berg ♦ Oliver will notify the client of the date of the site visit with the USACE. Berg ♦ Oliver anticipates that the actual site verification will be completed in one (1) field day, which will be scheduled by the USACE (normally within two to six months from the request submittal). The USACE will typically draft the verification letter within thirty (30) to sixty (60) days following the site field visit.

TASK III PERMIT DETERMINATION AND CE INSERT

This task includes the following:

- 1) Based upon the Wetland Delineation, an appropriate Section 404 Clean Water Act permit options/requirements will be evaluated.
- 2) Permitting recommendations will be made to the client, including any options available.
- 3) The appropriate language insert for the Categorical Exclusion (CE), as related to the completed delineation and permit requirements, will be developed and presented to the client for insertion into the CE document.

ATTACHMENT B



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 ♦ Austin ♦ WDBE/HUB ♦ www.bergoliver.com

2009 PERSONNEL RATE SCHEDULE

<u>Personnel</u>	<u>Hourly Billing Rate</u>
Project Director/Principal	\$165.00
Senior Associate	\$140.00
Professional Engineer	\$140.00
Project Manager/Registered Environmental Manager	\$125.00
Professional Geologist	\$115.00
Health/Safety Officer/Chemist	\$115.00
Project Coordinator	\$ 110.00
Wetlands Biologist/Ecologist	\$ 105.00
Soil Scientist/Geologist	\$ 105.00
Senior GIS Analyst	\$ 100.00
GIS Analyst	\$ 90.00
Field Technician	\$ 80.00
In-House Technician/Administrator	\$ 75.00
CADD Sr. Analyst	\$ 80.00
CADD Analyst	\$ 70.00
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.

Berg ♦ Oliver Associates, Inc.
BOA project number 7403espr
September 3, 2009

ATTACHMENT C

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

Berg+Oliver Associates, Inc.
BOA project number 7403espr
September 3, 2009

responsibility to Client or to others. BOA will not be liable for the failure of Client's contractors or others to fulfill their responsibilities, and Client agrees to indemnify, hold harmless, and defend BOA against any claims arising out of such failures.

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; and indemnify, hold harmless, and defend BOA against claims arising out of damages to underground objects or structures not properly defined;
- (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.

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. Client agrees to indemnify, hold harmless, and defend BOA to the fullest extent permitted by law against any and all claims arising out of such programs, activities, conditions, or deficiencies unless BOA is responsible for gross negligence with regard to its work.

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 any property liens or other 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 30 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 Collection. Client will reimburse BOA for BOA's costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement.

4.5 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 and indemnify, defend, and hold BOA harmless from any taxes, costs, and penalties arising out of the use or acceptance of same.

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

Insurance certificates will be furnished upon request.

5.2 Client indemnification. For separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Client agrees to indemnify, hold harmless, and defend BOA from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures, and suits, together with reasonable attorneys' and witness' fees and other cost and expenses of defense and settlement, which BOA 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 Client's violation of law or breach of this Agreement or out of the negligence or willful misconduct of Client, its other contractors, agents, suppliers, or employees.

5.3 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.

5.4 Limitation of liability. BOA's aggregate liability for any and all claims arising out of this Agreement or out of any goods or services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, tort, trespass, or any other theory of liability, will be limited to \$10,000 or the total compensation received by BOA from Client under this Agreement, whichever is the lesser. In no event will BOA be liable for special, indirect, incidental, or consequential damages, including commercial loss, loss of use, or lost profits, however caused, even if BOA has been advised of the possibility of such damages. Any claim will be deemed waived unless made by Client in writing and received by BOA within one year after completion of the services with respect to which the claim is made.

5.5 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.

5.6 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 indemnification. 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. Therefore, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in addition to the indemnification provided in Section 5.2, Client agrees to indemnify, hold harmless, and defend BOA against all damages arising out of or related to Oil or Hazardous Materials located at or removed from the site, including damages such as the cost of response or remediation arising out of application of common law or statutes such as CERCLA or other "Superfund" laws imposing strict liability.

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 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.