

October 13, 2016

Proposal No. P16-2310

East Side Union High School District  
830 North Capitol Avenue  
San Jose, CA 95133

Attention: Mr. Jeremy Bright: [brightj@esuhsd.org](mailto:brightj@esuhsd.org)

**Subject: Independence Adult Center (HazMat abatement Survey)**

Pre-Renovation Hazardous Material Survey with optional Industrial Hygiene/Hazardous  
Material Abatement Design and Monitoring Services  
Independence Adult Center – San Jose, CA

**INTRODUCTION:**

This letter presents Millennium Consulting Associates' ("Millennium") proposal to provide industrial hygiene survey and optional design and hazmat monitoring services to support renovation of the Independence Adult Center. This proposal is based on the October 6, 2016 invitation to bid.

**PROPOSED SCOPE OF SERVICES:**

Millennium's proposed scope includes providing a comprehensive hazmat survey and report; if requested, Millennium can assist the District by preparing and providing hazardous material design and construction documents (plans and specifications) and construction monitoring services.

For the purposes of this proposal, hazardous materials are described as asbestos containing materials (ACM), and/or lead containing materials (LCM), and/or mold affected building components and universal wastes (light fixtures, thermostats, illuminated exit signs). Should additional suspect hazardous materials be known or otherwise presumed to exist by the District, please notify Millennium as soon as possible for a revision to this proposed scope of services.

Millennium's base and optional scope of services is defined in the following Tasks 1, 2, 3, 4, 5 and 6. The scope for each task is described separately below.

**Base Scope - Tasks 1 and 2: Pre-Renovation Survey and Analysis**

As part of Tasks 1 and 2, Millennium will perform a comprehensive hazmat survey of the facility (roof is excluded). The hazmat survey will include the following scope of services:

1. Meet with the District and/or Construction Management Project Manager and project design/consultant as necessary to define the project site, affected areas, and identify potential hazardous materials.
2. Develop a sample plan; collect representative bulk samples of suspect hazardous materials for subsequent analysis. Sample collection will include relatively non-invasive sampling methods in areas where renovation will be performed.
3. Review bulk sample results necessary to develop mitigation and abatement strategies that can be incorporated into the project scope of work as it relates to the handling or treatment of identified hazardous materials.
4. Prepare written report with conceptual cost estimate for budgeting and planning purposes.
5. Prepare necessary ancillary reports and/or documentation for compliance with NESHAPs (where applicable).

### **OPTIONAL Task 3: Hazardous Materials Construction Document Preparation:**

As requested, Millennium will assist in the preparation of project construction documents for both public bidding and Job Order Contracting delivery methods, and for project change orders. In providing construction document services, Millennium will:

1. Develop hazardous material specifications for the specific work to be performed for the abatement of hazardous materials (where present). The hazardous materials specification will also address contractor assist work that could disturb lead containing paint during re-installation of new finishes and components).
2. Hazardous material specifications shall address contractor qualifications submittals, removal and decontamination procedures, proper worker protection and final clearance criteria. The specifications will incorporate all applicable federal, state and local laws, regulations, documents, codes, District policies and requirements that govern hazardous materials abatement/containment work, along with describing all labor, materials, services, permits and fees that are required to accomplish the hazardous materials abatement/containment and any required restoration. The hazardous material specification will also address all applicable regulatory requirements for demolition (including NESHAP permitting where appropriate), removal, transportation and disposal of hazardous materials. The hazmat specifications shall include a list of all agencies required to be notified by the contractor.
3. Develop hazardous material abatement drawings for proposed abatement-related tasks. The drawings will show the approximate location of hazardous materials to be removed as part of the renovation. The drawings will be incorporated into project specifications as attachments.

### **OPTIONAL Task 4: Bidding Services:**

As requested, Millennium will assist the District and Construction Management team during the bidding phase by providing the following:

1. Attending two pre-bid walks to review the hazardous materials related work as described in the project specifications.
2. Provide written responses to Request for Information (RFI's) and prepare written addenda pertaining to hazardous material related work as required. All written responses will be coordinated with the District and or Construction Management team.

**OPTIONAL Task 5: Hazardous Material Abatement Monitoring and Industrial Hygiene Inspection Services:**

As requested, Millennium will provide hazardous material (HAZMAT) abatement inspection and monitoring services by providing the following:

1. Attending an initial pre-construction meeting to review necessary demolition permit submittals.
2. Attending weekly construction progress meetings (as necessary) to coordinate abatement monitoring with planned work activities during the project (estimate one meeting).
3. Reviewing hazardous material subcontractor submittals for conformance with the project specifications
4. Inspecting abatement enclosures and/or regulated areas prior to initiation of abatement and/or demolition activities for conformance with project specifications.
5. Performing necessary clearance inspections and testing; and,
6. Performing final acceptance testing (Asbestos TEM Air Sampling and lead wipe testing) following completion of work and prior to turnover to the District and/or General Contractor.

**OPTIONAL Task 6: Project Closeout:**

Millennium will provide project closeout services by providing the following:

1. Review contractor red-lined drawings related to hazmat abatement work; and
2. Preparing and/or reviewing required close-out documents.

**FEE ESTIMATE PROPOSAL:**

Millennium proposes to provide the industrial hygiene services referenced above (Tasks 1 - 2) in accordance with the following:

Task 1: Survey & Laboratory Analysis:	\$1,623.00
Task 2: Data Analysis & NESHAPs-compliant Report:	\$760.00
<b>OPTIONAL Task 3: Abatement Design, Plans &amp; Specifications:</b>	\$TBD
<b>OPTIONAL Task 4: Bid Support:</b>	\$TBD
<b>OPTIONAL Task 5: Abatement Monitoring &amp; Clearance Services:</b>	\$TBD
<b>OPTIONAL Task 6: Close Out Documentation:</b>	\$TBD
Total Estimate:	<u>\$2,383.00</u>

**Fee Estimate Assumptions & Limitations:**

Task 1: Survey & Laboratory Analysis: Fees are based on the estimated quantity of samples collected and analyzed. The actual quantity may vary; should the number exceed the estimate, Millennium will invoice the District in accordance with the terms of this proposal. Similarly, should the quantity be less, Millennium will invoice the District for the actual number of analysis performed. Please refer to the attached Fee Schedule, for a complete detail of values.

If you have any comments or questions, please do not hesitate to contact our office.

Sincerely,

Millennium Consulting Associates  
A **MECA** Consulting, Inc. Company

A handwritten signature in black ink, appearing to read 'Lee Ann Norman', with a stylized, flowing script.

Lee Ann Norman  
Project Manager

Attachment:   Conflict of Interest Statement  
                  Contract Services Agreement  
                  Certificate of Insurance  
                  Notice to Proceed  
                  Fee Schedule – Tasks 1-2  
                  Terms & Conditions



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/15/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Van Oppen & Co. 2, Inc. PO Box 793 Teton Village WY 83025		<b>CONTACT NAME:</b> Brenda Todd <b>PHONE (A/C, No, Ext):</b> 800-746-0048 <b>E-MAIL ADDRESS:</b> service@vanoppenco2.com <b>FAX (A/C, No):</b>	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Travelers Property Casualty Co	
		<b>INSURER B:</b> Colony Specialty Insurance Com	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**INSURED** MECAC-1MECA Consulting, Inc. dba  
Millennium Consulting Services  
401 Roland Way, Suite 250  
Oakland CA 94621**COVERAGES****CERTIFICATE NUMBER:** 1090039551**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CPL(Pollution) GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	PACEP304501	2/1/2016	2/1/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	<input type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	PACEP304501	2/1/2016	2/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			EXC304502	2/1/2016	2/1/2017	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 XS GL/CPL/E&O/AL/EL \$
A	<input type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	Y	UB-4430T410	5/1/2016	5/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	Professional Liability "Claims Made" Subject to GL Aggregate			PACEP304501	2/1/2016	2/1/2017	Each Claim 1,000,000 Aggregate 2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

East Side Union High School District and members of the Board of Trustees, and the officers, agents and employees of the ESUHSD Shall be included as additional insured on the general liability. Coverage shall be Primary and non-contributory and waiver of subrogation applies as per written contract.

**CERTIFICATE HOLDER**East Side Union High School District  
830 N Capitol Avenue  
San Jose CA 95133**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## HIRED AUTO AND NON-OWNED AUTO LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

EnviroPACE Insurance Policy

This Endorsement is subject to all of the provisions applicable to Coverage 1A – General Liability Bodily Injury And Property Damage, except as otherwise provided in this Endorsement. All numbers and letters used to designate paragraphs in this Endorsement are specific to this Endorsement only. They do not reference paragraphs in Coverage 1A. Insurance is provided only with respect to those coverages for which a specific Limit of Liability and Premium are shown:

### SCHEDULE

Coverage	Limits Of Liability	Premium
Hired Auto Liability Insurance	\$1,000,000 Each Occurrence Limit	\$ Included
Non-owned Auto Liability Insurance	\$1,000,000 Each Occurrence Limit	\$ Included
	\$1,000,000 Aggregate Limit	

#### A. Hired Auto Liability

The insurance provided under section **II. COVERAGE 1A – GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE** applies to **bodily injury** or **property damage** arising out of the maintenance or use of a **hired auto** by you or your **employees** in the course of your business.

#### B. Non-owned Auto Liability

The insurance provided under section **II. COVERAGE 1A – GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE** applies to **bodily injury** or **property damage** arising out of the use of a **non-owned auto** by any person in the course of your business.

#### C. Changes In Exclusions

Solely as respects the coverage provided by this Endorsement:

1. The following exclusions under section **IX. COMMON EXCLUSIONS – PART 1 COVERAGES** do not apply:
  - a. Aircraft, Auto or Watercraft;
  - b. Contractual Liability;
  - c. Damage to Impaired Property or Property Not Physically Injured;
  - d. Damage to Property;
  - e. Damage to Your Product;
  - f. Damage to Your Work;
  - g. Employer's Liability;
  - h. Liquor Liability;
  - i. Mobile Equipment; and

j. Recall of Products, Work or Impaired Property.

2. Section II. **COVERAGE 1A – GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE, 2. Specific Exclusions** is amended by the addition of the following:

Coverage 1A does not apply to any **claim**:

- a. Based upon or arising out of **bodily injury** or **property damage** for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury** or **property damage** occurs subsequent to the execution of the contract or agreement.

- b. Based upon or arising out of **bodily injury** to:

- (1) An **employee** of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or

- (2) The spouse, child, parent, brother or sister of that **employee** as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an **insured contract**; or
- (2) **Bodily injury** to domestic **employees** not entitled to workers' compensation benefits.

- c. Based upon or arising out of **property damage** to:

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

D. **Who Is An Insured**

Solely as respects the coverage provided by this Endorsement, section **XX. WHO IS AN INSURED** is deleted and replaced with the following:

**WHO IS AN INSURED**

1. Each of the following is an insured under this insurance to the extent set forth below:

- a. You.
- b. Any other person using a **hired auto** with your permission in the course of your business.
- c. With respect to a **non-owned auto**, any partner or **executive officer** of yours, but only while such **non-owned auto** is being used in your business.
- d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under Paragraph a., b. or c. above.

2. None of the following is an insured:

- a. Any person engaged in the business of his or her employer with respect to **bodily injury** to any co-**employee** of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-**employee** as a consequence of such **bodily injury**, or for

any obligation to share damages with or repay someone else who must pay damages because of the injury;

- b. Any partner or **executive officer** with respect to any **auto** owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in performing duties related to the conduct of an **auto business**, other than an **auto business** you operate;
- d. The owner or lessee (of whom you are a sublessee) of a **hired auto** or the owner of a **non-owned auto** or any agent or **employee** of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### E. Limits Of Liability

Solely as respects the coverage provided by this Endorsement, section **XXI. LIMITS OF LIABILITY AND DEDUCTIBLE** is amended by the addition of the following:

##### **LIMITS OF LIABILITY AND DEDUCTIBLE**

Regardless of the number of **hired autos**, **non-owned autos**, insureds, premiums paid, **claims** made or vehicles involved in the **occurrence**, the most we will pay for all damages resulting from any one **occurrence** is the applicable Limit of Liability indicated in the SCHEDULE above.

The Aggregate Limit indicated in the SCHEDULE above, subject to the Each Occurrence Limit indicated in the SCHEDULE above, is the most we will pay as damages for **bodily injury** or **property damage** sustained and **legal defense costs** incurred regardless of how many persons assert **claims** or **suits** against you.

The Each Occurrence and Aggregate Limits indicated in the SCHEDULE above are the most we will pay regardless of the number of insureds. These Limits of Liability are subject to and not in addition to the General Aggregate Limit shown in the Declarations. Payments under the Limits of Liability indicated in the SCHEDULE above are part of and erode the General Aggregate Limit shown in the Declarations.

#### F. Changes In Conditions

Solely as respects the coverage provided by this Endorsement, section **XXIII. CONDITIONS, 14. Other Insurance** is deleted and replaced with the following:

##### **Other Insurance**

This insurance is excess over any primary insurance covering the **hired auto** or **non-owned auto**.

#### G. Additional Definitions

Solely as respects the coverage provided by this Endorsement, section **XXV. DEFINITIONS** is amended by the addition of the following:

- 1. **Auto business** means the business or occupation of selling, repairing, servicing, storing or parking **autos**.
- 2. **Hired auto** means any **auto** you lease, hire, rent or borrow. This does not include any **auto** you lease, hire, rent or borrow from any of your **employees**, your partners or your **executive officers**, or members of their households.
- 3. **Non-owned auto** means any **auto** you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes **autos** owned by your **employees**, your partners or your **executive officers**, or members of their households, but only while used in your business.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NOTICE OF CANCELLATION BY US – CERTIFICATE HOLDER(S)

This endorsement modifies insurance provided under the following:

EnviroPACE Insurance Policy

### SCHEDULE

Certificate Holder(s):
CITY AND COUNTY OF SAN FRANCISCO DPW 1155 MARKET STREET, 4TH FLOOR SAN FRANCISCO, CA 94103

Section XXIII. **CONDITIONS, 4. Cancellation** is amended by the addition of the following:

If we cancel this Policy before the expiration date thereof, we will mail 30 days written notice (10 days for non-payment of premium) to the Certificate Holder(s) indicated in the SCHEDULE above.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



ONE TOWER SQUARE  
HARTFORD, CT 06183

**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 99 06 01 ( A) – 001**

POLICY NUMBER: (XJUB-4430T41-0-16)

**NAMED INSURED ENDORSEMENT**

Your name as shown in item 1 of the Information Page is amended to include the following:

MECA CONSULTING, INC.,  
DBA MILLENNIUM CONSULTING  
ASSOCIATES



ONE TOWER SQUARE  
HARTFORD, CT 06183

**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 99 03 76 ( A) – 001**

**POLICY NUMBER: (XJUB-4430T41-0-16)**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT – CALIFORNIA  
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

The additional premium for this endorsement shall be 3 .0 % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

ANY PERSON OR ORGANIZATION FOR  
WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED  
PRIOR TO LOSS TO FURNISH  
THIS WAIVER.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium

Insurance Company

Countersigned by \_\_\_\_\_

**DATE OF ISSUE: 03-21-16 ST ASSIGN:**

## SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements applying to and made part of this policy at the time of issuance:

NUMBER	TITLE
FORMS APPLICABLE -	ENVIRONMENTAL POLLUTION & CASUALTY EXPOSURES (ENVIROPACE) POLICY DECLARATIONS
CAPRNOTICE-0911 D2-0711	CALIFORNIA NOTICE – PREMIUM REFUNDS CALIFORNIA NOTICE
ENVNOTICE-0615	IMPORTANT POLICYHOLDER INFORMATION
EPACE001-0415	ENVIROPACE INSURANCE POLICY
EPACE100-0814	ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS- COMPLETED OPERATIONS
EPACE101-0814	ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS- SCHEDULED PERSON OR ORGANIZATION
EPACE107-0714	PRIMARY AND NON-CONTRIBUTORY - OTHER INSURANCE CONDITION
EPACE108-0714	MINIMUM EARNED PREMIUM ENDORSEMENT
EPACE109-0714	LIMITED LEGAL DEFENSE COSTS OUTSIDE THE LIMITS OF LIABILITY- PROFESSIONAL LIABILITY
EPACE110-0714	AMENDED GENERAL AGGREGATE ENDORSEMENT
EPACE115-0714	HIRED AUTO AND NON-OWNED AUTO LIABILITY INSURANCE
EPACE127-0714	SPECIFIED PROJECT(S) - EXCESS LIMITS OF LIABILITY
EPACE139-0115	MICROBIAL MATTER - CLAIMS-MADE COVERAGE - CONTRACTING SERVICES POLLUTION LIABILITY
EPACE168-1215	DELETION OF AUTOMATIC COVERAGE FOR SUBSIDIARIES
EV165B-0115	CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM EXCLUSION
ILP001-0104	U.S. TREASURY DEPT'S "OFAC" ADVISORY NOTICE TO POLICYHOLDERS
PRIVACYNOTICE-0415	PRIVACY NOTICE
SIGCIC-1013	SIGNATURE PAGE
TRIANOTICEENV-0115	POLICYHOLDER DISCLOSURE-NOTICE OF TERRORISM INSURANCE COVERAGE
U094-0415	SERVICE OF SUIT

- d. Covered by Project-Specific Insurance
  - e. Discrimination
  - f. Dishonest or Fraudulent Act
  - g. Disputed Fees
  - h. Employer's Liability
  - i. Failure to Comply
  - j. Failure to Maintain
  - k. Faulty Workmanship
  - l. Fiduciary Liability of Non-Named Insured
  - m. Fines, Penalties and Assessments
  - n. Insured versus Insured
  - o. Intellectual Property
  - p. Internal Expenses
  - q. Known Wrongful Act
  - r. Nuclear Material
  - s. Owned Facilities
  - t. Personal and Advertising Injury
  - u. Previously Reported Claims
  - v. Project Delays or Cost Overruns
  - w. War
  - x. Workers' Compensation and Similar Laws
  - y. Warranties
  - z. Your Product
3. Defense - Coverage 3 -- Professional Liability

## **XX. WHO IS AN INSURED**

**34**

- 1. Applicable to Coverage Part 1 and Part 2:
- 2. Applicable to Coverage 3 – Professional Liability

## **XXI. LIMITS OF LIABILITY AND DEDUCTIBLE**

**37**

- 1. Limits Applicable to Part 1 Coverages
  - a. General Aggregate Limit and General Aggregate Cap
  - b. Products-Completed Operations Aggregate Limit
  - c. Each Occurrence Limit
  - d. Personal and Advertising Injury Limit
  - e. Employee Benefits Administration Limit
  - f. Crisis Management Costs Limit - Coverage 1G
  - g. Damage to Premises Rented to You Limit
  - h. Medical Expense Limit
- 2. Limits Applicable to Part 2 - Special Pollution Coverages
  - a. Pollution Liability Aggregate Limit
  - b. Individual Coverage Limits
  - c. Each Pollution Condition Limit
- 3. Limits Applicable to Coverage 3 - Professional Liability
  - a. Professional Liability Aggregate Limit
  - b. Each Wrongful Act Limit
- 4. Multiple Coverage Sections
- 5. Multiple Policies or Policy Periods
- 6. Extension of Policy Period
- 7. Deductible

## **XXII. NOTICE, RIGHTS AND DUTIES**

**41**

- 1. Your Duties in the Event of an Occurrence, Offense, or Wrongful Act
- 2. Your Duties in the Event of a Pollution Condition
- 3. Our Rights in the Event of a Pollution Condition
- 4. Your Duties in the Event of a Claim or Suit
- 5. Your Duties with Respect to Emergency Expenses
- 6. Knowledge of an Occurrence

**XXIII. CONDITIONS**

42

1. Action Against Company
2. Appeals
3. Bankruptcy
4. Cancellation
5. Changes and Assignment
6. Consent
7. Cooperation
8. Currency
9. Declarations and Representations
10. Economic and Trade Sanctions
11. Headings
12. Independent Counsel
13. Inspection and Audit
14. Other Insurance
  - a. Primary Insurance
  - b. Excess Insurance
  - c. Method of Sharing
15. Separation of Insureds
16. Sole Agent
17. Subrogation
18. Voluntary Payments

**XXIV. EXTENDED REPORTING PERIODS**

47

**XXV. DEFINITIONS**

49

1. Administration
2. Advertisement
3. Auto
4. Bodily Injury
5. Cargo
6. Claim
7. Cleanup Costs
8. Conveyance
9. Coverage Territory
10. Crisis Management Consultant
11. Crisis Management Costs
12. Crisis Management Event
13. Emergency Expenses
14. Employee
15. Employee Benefit Program
16. Environmental Damage
17. Environmental Laws
18. Environmental Professional
19. Executive Officer
20. First Named Insured
21. Hostile Fire
22. Illicit Abandonment
23. Impaired Property
24. Inception Date
25. Insured Contract
26. Job Site
27. Legal Defense Costs
28. Leased Worker
29. Loading or Unloading
30. Location

## XX. WHO IS AN INSURED

### Applicable to Coverage Part 1 and Part 2:

Each of the following is an insured under Coverage Part 1 and Part 2:

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. With respect to all coverages other than Coverage 1F (Employee Benefits Administration Liability), each of the following is also an insured:
  - a. Your **volunteer workers**, but only while performing duties related to the conduct of your business, or your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these **employees** or **volunteer workers** is an insured for:
    - (1) **Bodily injury or personal and advertising injury:**
      - (a) To you, to your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
      - (b) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in subparagraph (1) (a) above; or
      - (c) Arising out of the providing or failure to provide professional health care services except incidental health care services provided by any physician, dentist, nurse, emergency medical technician or paramedic who is employed by you to provide such services and provided you are not engaged in the business of providing such services.

- (2) **Property damage or environmental damage** to property:
    - (a) Owned, occupied or used by; or
    - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your **employees, volunteer workers**, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your **employee or volunteer worker**), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Policy.
3. Any subsidiary, associated, affiliated or allied company or corporation, including subsidiaries thereof, of which you have more than 50% ownership interest as of the **inception date** is a Named Insured; however, such entities shall cease to be a Named Insured if you cease to maintain more than a 50% ownership interest.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the **policy period**, whichever is earlier;
  - b. Coverage under this Policy does not apply to any **bodily injury, property damage, environmental damage or pollution condition** that took place, or an offense or **wrongful act** committed, before you acquired or formed the organization.
5. Any person or organization with whom you agree to include as an insured pursuant to a written contract, written agreement or permit is an insured, but: (i) only with respect to **bodily injury, property damage, personal and advertising injury, environmental damage or clean-up costs** caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf and arising out of your operations, **your work**, equipment or premises leased, rented or owned by you, or **your products** which are distributed or sold in the regular course of a vendor's business; (ii) only for the lesser of the applicable limits of liability set forth in section XXI. LIMITS OF LIABILITY AND DEDUCTIBLE or the minimum limits of liability required by such written contract; (iii) the insurance afforded only applies to the extent permitted by law; (iv) the insurance afforded will not be broader than that which you are required by the contract or agreement to provide for such insured. However:



**3. Our Rights in the Event of a Pollution Condition**

We shall have the right, but not the duty, to clean up or mitigate a **pollution condition** upon receiving notice as provided under Paragraph 2. above. Any sums we expend in taking such action shall be deemed incurred or expended by the insured and shall be applied against the Limits of Liability and Deductible of this Policy. Further, we shall have the right, but not the duty, to participate in decisions regarding **cleanup costs** and to assume direct control over all aspects of the cleanup and the adjustment of any **claim** or **emergency expenses** up to the applicable Limits of Liability. If we exercise this right, the insured shall promptly reimburse us for any element of **loss** falling within the Deductible.

**4. Your Duties in the Event of a Claim or Suit**

Without limiting the requirements of any insuring agreement in this Policy, you shall give us written notice of any **claim** made or **suit** brought against an insured as soon as practicable. Such written notice shall include the following:

- a. All reasonably obtainable information with respect to the circumstances of the **claim** or **suit**, and the names and addresses of the claimants and available witnesses;
- b. All demands, summonses, notices or other process or legal papers received in connection with the **claim** or **suit**; and
- c. Other information in the possession of the insured or its hired experts which we deem reasonably necessary.

**5. Your Duties with Respect to Emergency Expenses**

Within ten (10) days of the first discovery of the **pollution condition** for which **emergency expenses** have been incurred, you shall forward to us all information pertaining to the **emergency expenses** incurred. Such information shall include, to the extent reasonably available, the cause and location of the **pollution condition**, costs incurred and all associated invoices, technical reports, laboratory data, field notes, expert reports, investigations, data collected, regulatory correspondence or any other documents relating to the **emergency expenses** incurred.

**6. Knowledge of an Occurrence**

Knowledge of an **occurrence**, offense, **pollution condition** or **wrongful act** by any of your agents, servants or **employees**, or any other person shall not itself constitute knowledge by you unless a **responsible insured** or a manager or equivalent level employee in your Risk Management, Insurance or Law Department possesses such knowledge.

**7. Mistaken Notice**

If you mistakenly notify another insurer rather than us of an **occurrence**, offense, **pollution condition** or **wrongful act**, such mistaken failure to notify us shall not invalidate coverage so long as you notify us of the **occurrence**, offense, **pollution condition** or **wrongful act** within a reasonable time after you become aware of such error.

## **XXIII. CONDITIONS**

**1. Action against Company**

No person or organization other than an insured has a right under this Policy:

where the **claim** arose or is being defended. In addition, we may exercise our right to require that such counsel:

- a. meet certain minimum qualifications with respect to competency, including possessing a minimum of five (5) years experience in defending **claims** similar to those asserted against the insured;
- b. maintain suitable errors and omissions insurance coverage; and
- c. agree, in writing, to respond in a timely manner to our requests for information regarding the **claim**.

An insured may, at any time, waive any right it may have to select independent counsel.

### 13. **Inspection and Audit**

With reasonable notice to you, we shall be permitted, but not obligated, to inspect, sample and monitor on a continuing basis your property, equipment and/or operations. Neither our right to make inspections, sample and monitor, nor the actual undertaking thereof, nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of you or others, to determine or warrant that such property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with **environmental laws**, or any other law, rule or regulation. Further, the **first named insured** agrees on behalf of all insureds, to grant us both the right to interview, and access to, any insured whom we reasonably believe may have relevant information pertaining to any **claim** or **pollution condition** potentially covered under this Policy.

### 14. **Other Insurance**

If other valid and collectible insurance is available for any **loss** subject to coverage under this Policy, our obligations are limited as follows:

#### a. **Primary Insurance**

Except as provided in paragraph **b.** below, this insurance is primary. When this insurance is primary, our obligations are not affected unless any of the other insurance is also primary, in which case we will share with all other primary insurance by the method described in paragraph **c.** below. However, in the event that a written contract, written agreement or permit requires this insurance to be primary for any person or organization that you agreed to insure, and provided such person or organization is an insured under this Policy, this insurance will be primary and we will not seek contribution from any other insurance issued to such person or organization.

#### b. **Excess Insurance**

This insurance is excess over:

- (1) Any other insurance, whether primary, excess, contingent or on any other basis that is: (i) Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for **your work**; (ii) Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; (iii) insurance purchased by you to cover your liability as a tenant for **property damage** to premises rented to you or temporarily occupied by you with permission of the owner; or (iv) insurance applicable to **loss** arising out of the maintenance or use of aircraft, **autos** or watercraft;

Misrepresentation or concealment by one insured shall not prejudice the interest or coverage for another insured under this Policy, except where such latter insured is a parent, subsidiary, or affiliate of the insured that committed such misrepresentation or concealment. For the purposes of this condition, an "affiliate" means an entity that directly or indirectly is controlled by, or is under common control with, the insured that committed such misrepresentation or concealment. Notwithstanding the forgoing, nothing stated herein shall preclude us from seeking and obtaining rescission of this Policy in the event of a material misrepresentation in the application for insurance. In addition, nothing stated herein shall operate to increase the limit(s) of liability provided hereunder.

**16. Sole Agent**

The **first named insured** shall act on behalf of all insureds for the payment of the Deductible, payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation, and the exercise of the rights provided in section XXIV. EXTENDED REPORTING PERIODS.

**17. Subrogation**

In the event of any payments made pursuant to this Policy, we shall be subrogated to any insured's rights of recovery against any person, entity or organization. The insured shall execute and deliver instruments and papers and do whatever is necessary to secure and perfect such rights. No insured shall do anything to prejudice such rights.

Any recovery obtained as a result of subrogation, after such expenses incurred in the subrogation proceedings are deducted by us, shall accrue first to the insured to the extent of any payments in excess of the Limit of Liability; then us to the extent of any payments made under this Policy; and then to the insured to the extent of its Deductible.

However, solely with respect to Coverage Part 1 or Coverage Part 2, if the insured has waived rights of recovery against any person, entity or organization prior to a **loss** or **claim**, we waive any right to recovery we may have under the policy against such person, entity or organization.

**18. Voluntary Payments**

The insured shall not settle any **claim** or **suit** or, with the exception of **emergency expenses**, make any voluntary payments without our prior written consent. If we recommend a settlement, the insured shall have the opportunity to consent to it, such consent not to be unreasonably withheld or delayed. If we recommend a settlement that is acceptable to a claimant for a total amount in excess of the applicable Deductible and within the applicable Limits of Liability and the insured refuses to consent to such settlement, then our liability for **loss** shall be limited to that portion of the recommended settlement, and the **legal defense costs** incurred as of the date of the insured's refusal, which exceeds the Deductible and falls within the applicable Limit of Liability.

**XXIV. EXTENDED REPORTING PERIODS**

This section XXIV. applies to Coverages 2C, 2D and 3 only.

1. We will provide one or more Extended Reporting Periods, as described below, if this Policy is terminated for any of the following reasons:
  - a. Cancellation by us for any reason other than failure to pay a premium when due or fraud or material misrepresentation;



## CONFLICT OF INTEREST STATEMENT East Side Union High School District (Consultants)

**[This form must be filled out, signed, dated and submitted by all persons seeking to serve as a consultant to the District]**

Board Policy 3600 of the East Side Union High School District provides in part:

“Independent contractors applying for a consultant contract shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend the consultant's employment.”

The Superintendent has determined that all persons seeking to serve as a consultant to the District shall fill out truthfully, sign, date and submit this Conflict of Interest Statement prior to performing any consultant work or services for the District.

I, Jack McCubbin, Managing Principal of **Millennium Consulting Associates**, hereby certify the following:

1. I am not an employee of the District.
2. Within the past year I have not been a member of the District Board of Trustees of the District.
3. Neither I nor any member of my immediate family (includes parent, spouse, domestic partner, or child) or member or resident of my household is a member of the District's Citizens Bond Oversight Committee for the District's Measure G or Measure E bond programs.
4. Within the past year I have not provided or made, and will not provide or make, any promise of any gift<sup>1</sup> of any kind (money, meals, goods, services, entertainment tickets, etc.), in-kind services, commission, or fully or partially expense-paid trips to any District Board Member or District employee whose responsibilities include the selection of District consultants or the evaluation, supervision or oversight of District consultants (a “**Responsible Employee**”), except:

\_N/a\_

---

<sup>1</sup> “Gifts” do not include promotional or advertising items such as calendars, desk pads, notebooks and other office items valued less than \$25.00 and which are of the type usually offered by business concerns free of charge to all as part of their public relations programs.



5. I do not employ or retain, and will not employ or retain, any current District **Responsible Employee** as a consultant, independent contractor or employee during the term of my consultancy agreement with the District.

6. I am authorized to make, and do make, this certification on behalf of **Millennium Consulting Associates** [CONSULTANT].

The foregoing certifications are true and correct. I make this certification under penalty of perjury under the laws of the State of California.

Signature of Consultant

A handwritten signature in blue ink, which appears to read "Jim McCallin", is written above a solid black horizontal line.

Signature Date

July 27, 2016\_

---

---

## PROPOSAL ACCEPTANCE AND NOTICE TO PROCEED

**Proposal Number: P16-2310**

**Project Name: East Side Union High School District-Independence Adult Center  
HazMat Survey and Report  
625 Educational Park Dr.  
San Jose, CA 95133**

### Task Fee Estimate Summary Table

Task 1: Survey & Laboratory Analysis:	\$1,623.00
Task 2: Data Analysis & NESHAPs-compliant Report:	\$ 760.00
<b>OPTIONAL</b> Task 3: Abatement Design, Plans & Specifications:	TBD
<b>OPTIONAL</b> Task 4: Bid Support:	TBD
<b>OPTIONAL</b> Task 5: Abatement Monitoring & Clearance Services:	TBD
<b>OPTIONAL</b> Task 6: Close Out Documentation:	TBD
Total Estimate:	<u>\$2,383.00</u>

\*See Proposal P16-2310 for assumptions included in fee estimate.

Millennium will initiate work immediately upon receipt of written authorization to proceed.

**YOUR SIGNATURE INDICATES ACCEPTANCE OF THE PROPOSAL REFERENCED ABOVE, THE CONTRACT DOCUMENTS AND THE TERMS AND CONDITIONS UNLESS EXPRESSLY MODIFIED IN WRITING.**

**ACCEPTED BY:**  
**MILLENNIUM CONSULTING ASSOCIATES**

**CLIENT: \***

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Officer authorized to execute contracts)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\*This contract must be signed by a principal of the company or officer of the corporation or other representative authorized to execute contracts on behalf of client. Further, The Client's authorized representative hereby represents that he/she has read and understands the paragraphs entitled Insurance and Indemnity and Limitation of Liability, which deal with the allocation of risk between the CLIENT and MILLENNIUM.

**Please sign and return the signature page as our notice to proceed. MILLENNIUM will forward a fully conformed copy of the agreement upon receipt of the signed signature page.**

# EAST SIDE UNION HIGH SCHOOL DISTRICT

## CONTRACT SERVICES AGREEMENT IRS GUIDELINES

Please complete questionnaire below before completing Contract Services form.

Consultant Firm's Name: Millennium Consulting Associates

Brief Description of Services: Provide Hazardous Materials Survey with Report

PART I	YES	NO
1. Has this category of worker already been classified an "employee" by the IRS? Administrators                      tutors                      nurses teachers/instructors              cafeteria workers              psychologists substitutes                      counselors                      intern psychologists school bus drivers                      examination monitors              specialty teachers clerical staff                      proctors                      librarians athletic coaches                      individuals "filling in" on an interim basis		X
2. Is this individual working as an employee prescribed by the Education Code?  Education Code Sections 45100-45451 define what constitutes the classified service. Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.		X
3. Is the individual already an employee of the district in another capacity?		X
4. Has the individual performed substantially the same services for the district as an employee in the past?		X
5. Are there currently employees of the district doing substantially the same services as will be required of this individual?		X
6. Does the district have the legal right to control the method of performance by this individual? Consider whether the District will train the individual or give instruction as to when, where, how, and in what order the work will be performed.		X
7. Does the District require the individual to submit reports on the details of their work or work at a particular site? These factors indicate the District maintains control sufficient for an employer/employee relationship. However, it is not necessary that the District exercise this right, or have the expertise required to do so.		X

If the answer to any of the above questions is "YES" --- **STOP HERE !!!**

Do not complete the rest of the questions. The individual is a district employee and must be paid and reported accordingly. Call Human Resources for further details.

If all of the above are "NO", continue...

PART II	YES	NO
8. Will all the work be performed by this individual? Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.		X
9. Does the district have a continuing relationship with this individual? Is this a "one shot" assignment, or will the District continue to use this individual in the future? This could be on an infrequent or irregular basis, but a continuous relationship exists.	X	
10. Can this relationship be terminated without the consent of both parties?		X

If the answer to the question 8, 9, or 10 is "YES", there is a good possibility that an employment relationship exists. Questions 8 & 9 are indicators of district control that in conjunction with other factors imply an employment relationship.

11. Does the individual operate an independent trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, the District is considered to be a separate entity. Keep in mind: if the District is using this individual's services on a full-time basis, the individual is <u>not</u> available to the general public.	X	
12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? This is indicative of economic risk inherent in business enterprises. An independent Consultant must be able to make a profit or sustain a loss.	X	

If either 11 or 12 are "**NO**", the individual is a district employee **STOP HERE** and process the individual through Human Resources and payroll.

If 11 and 12 are both "**YES**", continue...

13. Does the individual provide all materials and support services necessary for the performance of this service? The District should not be providing office space on a regular basis, clerical, secretarial, or other support for the individual such as materials, copying, printing, office supplies, etc. Any necessary assistance should be provided by the individual.	X	
14. Is this individual paid by the job or upon completion and acceptance of the work as a whole or milestones identified in the contract?	X	
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? Generally the individual will pay the cost of any travel and business expenses incurred to perform the work. However, some agreements may be made to provide for payment of airfare, mileage, etc. for consultants.	X	

If 11 and 12 are "**YES**", 13 through 15 should also be "**YES**" and are items that should be written into the Independent Contract.

This individual is an Independent Consultant. A "**YES**" on questions 13 through 15 supports the district's conclusion and substantiates a "reasonable basis" for treatment as independent Consultant. While there is circumstances where the district may pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.

---

**By signing below, Consultant and Purchasing Manager attest that they have reviewed District guidelines and certify that the information above is true and correct.**

Consultant Signature \_\_\_\_\_ Date \_\_\_\_\_

Purchasing Manager Signature \_\_\_\_\_ Date \_\_\_\_\_

Please attach questionnaire to completed Contract Services Agreement form and send to the Business Office.

(2015.08.28)



EAST SIDE UNION HIGH SCHOOL DISTRICT

**CONTRACT SERVICES AGREEMENT (No. \_\_\_\_\_)**

TO: BUSINESS SERVICES

FROM: Facilities/Capitol Projects \_\_\_\_\_ Janice Unger \_\_\_\_\_ Ext.# \_\_\_\_\_  
SCHOOL/DEPT. CONTACT PERSON

1. **PARTIES:** The East Side Union High School District (ESUHSD), whose address is 830 N. Capitol Avenue, San Jose, CA 95133, and the following named Consultant:

Consultant Firm's Name: **Millennium Consulting Associates**

Address: 401 Roland Way, Suite 250 CITY: Oakland ST: CA Zip: 94621

Telephone: 925.808.6700 Fax No.: 925.808.6708

Email Address: [www.mecaenviro.com](http://www.mecaenviro.com) S.S. or Federal I.D. Number: 68-0443384

Consultant's License #9823CP Type: CIH Expiration: 6-1-2021  
mutually agree and promise as follows and as per terms and conditions set forth on the reverse side of this page (page 2):

2. **CONTRACT TERM:** Effective dates: November 2016 to Completion of Project.
3. **CONSULTANT'S OBLIGATION:** In consideration of the compensation, the Consultant shall provide the following services, materials, products, and/or reports. **Attach proposals and other documentation** if available.

**The scope of services, hereinafter referred to as Services, covered by this Contract Service Agreement (CSA), which is incorporated and made part of this agreement by this reference and the accompanying vendor's, estimated breakdown of cost per proposal submitted on 10/13/16 (P16-2310) for the (Hazmat Abatement Survey) Independence Adult Center. Project # Z-043-602.**

The scope of work includes Hazardous Materials Survey and/or Report. ESUHSD does not pay for mileage. Services not to exceed without District approval = \$2,383.00.

**Invoices are to be submitted to East Side Union High School District in the following manner:**

1. Invoices shall be in sufficient details to fully understand the services provided during the time period specified on the invoice, ie: dates, times, location, tasks, staff/sub consultant who provided the service, and any other information that is pertinent to the services provided.
2. Purchase order number, project name and number, DSA file number, along with application number assigned to this project needs to be listed on each invoice.
3. Invoices are to be sent electronically to Capital Accounting Department, [CapAcctg@esuhsd.org](mailto:CapAcctg@esuhsd.org) or mail to East Side Union High School District, 830 North Capitol Ave, San Jose, CA 95133 Attn: Capital Accounting.

(If applicable)

ESUHSD has retained the services of \_\_\_\_\_ as the Architect of the Construction Work.

ESUHSD has retained the services of \_\_\_\_\_ as the Construction Manager of the Construction Work.

ESUHSD has retained the services of \_\_\_\_\_ as the DSA Inspector of Record of the Construction Work.

Remit Address: Millennium Consulting Associates, 401 Roland Way, Suite 250, Oakland, CA 94621

4. **COMPENSATION:** In consideration of Consultant's provision of services as described above, ESUHSD shall pay Consultant upon completion of services, as follows:

Hourly Rate \$ \_\_\_\_\_/hour    Total hours \_\_\_\_\_    **Total Fees \$2,383.00**

Other (i.e. monthly, quarterly, annually): \_\_\_\_\_

5. **BUDGET CODE AND FUNDING SOURCE:**

**FUNDING SOURCE:** \_\_\_\_\_

FD XX	LOC XXX	PROG XXX	GOAL XXXX	FUNC XXXX	OBJT XXXX	RESC XXXX	YR X	MGR XXX	\$ AMOUNT

6. **APPROVALS:** These signatures attest the parties' agreement hereto:

**East Side Union High School District:**

School Site/Dept. Administrator \_\_\_\_\_ Date \_\_\_\_\_

Business Services \_\_\_\_\_ Date \_\_\_\_\_

Associate Superintendent \_\_\_\_\_ Date \_\_\_\_\_

Board of Trustees \_\_\_\_\_ Date \_\_\_\_\_

**Consultant:**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

(Form #3002-23 mdc 8/03)

## CONTRACT TERMS AND CONDITIONS

1. **COMPENSATION:** In consideration of Consultant's provision of services as described, and subject to the payment provisions expressed herein, ESUHSD shall pay Consultant as agreed, upon Consultant's submission of a properly documented demand for payment which shall be submitted not later than 30 days from the end of the month in which the contract services were rendered, and upon approval of such demand by ESUHSD.
2. **TERMINATION:** This contract may be terminated by ESUHSD at its sole discretion, upon five-day (5) advance written notice thereof to the Consultant, or cancelled immediately by written mutual consent.
3. **INDEPENDENT CONSULTANT STATUS:** This contract is by and between two independent Consultants and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. In executing this agreement, the Consultant certifies that no one who has or who will have any financial interest under this agreement is an officer or employee of ESUHSD. Additionally, as the Consultant is not an ESUHSD employee, ESUHSD is not responsible for obtaining workers' compensation insurance coverage for the Consultant.
4. **COMPLETENESS OF AGREEMENT:** This agreement constitutes the entire understanding of the parties and any change or modification shall be in writing and signed by both parties hereto.
5. **INDEMNIFICATION:** The Consultant agrees and shall defend, indemnify, save, and hold harmless ESUHSD, its agents, officers and employees from any and all claims, costs and liability for any damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the Consultant, its agents, servants, employees or subConsultants hereunder, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Consultant in the performance of this agreement. Consultant will reimburse the ESUHSD for any expenditures, including reasonable attorney's fees, ESUHSD may make by the reason of the matters that are the subject of this indemnification, and if requested by ESUHSD, will defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of the Consultant.
6. **INSURANCE:** The Consultant will maintain general liability insurance, including automobile coverage, in an amount as may be reasonably necessary to assure compliance with the indemnification provision, herein above. Additional insurance may be required by ESUHSD. The Consultant agrees to produce copies of the required policies of insurance upon request of ESUHSD. The requirements of this provision may be waived by ESUHSD; however, any waiver shall not affect the Consultant's liability to ESUHSD under the indemnification provision.
7. **NON-DISCRIMINATION/AFFIRMATIVE ACTION:** No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, age, ancestry, physical handicap, religion, or sex of such person or any other basis protected by law.
8. **LICENSE AND AUTHORITY:** The Consultant warrants that he/she/it will maintain all necessary licenses, registrations, and certifications during the term of this agreement, and that, if other than a natural person, it is duly authorized to enter into this agreement by its governing or controlling body. Consultant shall provide evidence or copies of all necessary licenses, registrations and certifications upon ESUHSD's request.
9. **EQUIPMENT AND FACILITIES:** The Consultant will provide all necessary equipment and facilities to render his/her/its services pursuant to this agreement, unless the parties to this agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.
10. **EXPENSES:** The Consultant shall be responsible for all costs and expenses incident to the performance of services for ESUHSD, including but not limited to: all costs of equipment provided by the Consultant, all fees, fines, licenses, bonds, or taxes required of or imposed against the Consultant, and all other of the Consultant's costs of doing business. ESUHSD shall not be responsible for any expenses incurred by the Consultant in performing services for ESUHSD except as provided by the agreement.
11. **TAX REPORTING/PAYMENT RESPONSIBILITIES:** ESUHSD shall provide an annual statement of compensation paid on the appropriate federal and/or state information forms. The Consultant is responsible for payment of any federal and/or state tax amounts due.
12. **ASSIGNMENT:** Without the written consent of ESUHSD, this agreement is not assignable by the Consultant, either in whole or in part.
13. **GOVERNING LAW AND LABOR CODE:** The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California. The Consultant shall be subject to and shall comply with all Federal, State, and Local laws and regulations applicable with respect to its performance under this contract, including but not limited to, licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination. Consultant shall comply with the applicable provisions of the Labor Code, Section 1720-1861, State of California, especially in regards to prevailing wages, copies of which are available at the District Office.
14. **AMBIGUITY:** The parties to this agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.
15. **FINGERPRINTING AND CRIMINAL RECORDS CHECK:** Consultant shall comply with the provisions of Education Code Section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Consultant shall not permit any employees to have any contact with District pupils until such time as Consultant has verified in writing to the governing board of the East Side Union High School District that such employee has not been convicted of a felony as defined in Education Code Section 45125.1. Consultant's responsibility shall extend to all employees, subConsultants, and employees of subConsultants regardless of whether such individuals are paid or unpaid, concurrently employed by the District, and/or acting as independent Consultants of the Consultant. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or participation in the project and prior to permitting contact with pupils. If the Consultant believes that Education Code section 45125.1 does not require fingerprinting, Consultant shall take the appropriate steps to provide for the safety of any pupils that may come into contact with its employees.

**Professional Services - *Environmental & Industrial Hygiene Consulting***

**Project:** East Side UHSD - Independence Adult Center  
**Proposal Due Date:** 10/13/2016  
**IH Firm:** MILLENNIUM CONSULTING ASSOCIATES  
**Contact:** Jack McCubbin/Lee Ann Norman  
**Email Address:** [jmccubbin@mecaenviro.com](mailto:jmccubbin@mecaenviro.com) [Lnorman@mecaenviro.com](mailto:Lnorman@mecaenviro.com)  
**Scope of Work:** Provide environmental industrial hygiene services in conformance with the proposal P16-2310 for detailed scope of work.

**Task 1 :Assessment/Investigation Phase - *Hazardous Materials Survey (Work Plan, Inspection, Sampling)*****Labor**

Labor Category	Description of Work	No. of Hours	Hourly Rate per	Total
Principal			\$175.00	\$0.00
Registered Professional (CIH, CSP, PE, AIA)	Project Manager	1	\$150.00	\$150.00
Senior Professional Level - (Eng./IH/Envir. Specialist)			\$125.00	\$0.00
Project Professional Level - (Eng./IH/Envir. Specialist)	Lead Surveyor	4	\$105.00	\$420.00
Senior Staff Level - (Eng./IH/Envir. Specialist)			\$95.00	\$0.00
Staff Level - (Eng./IH/Envir. Specialist)			\$85.00	\$0.00
Sr. Field Technician	Assistant Field Surveyor	4	\$75.00	\$300.00
Field Technician			\$65.00	\$0.00
Autocad/Graphics Specialist			\$65.00	\$0.00
Administrative Support Specialist	Clerical, Data Entry, etc.	1	\$50.00	\$50.00
<b>Total Labor Costs</b>				<b>\$920.00</b>

**Other Costs (Lab, Field Equipment, Field Supplies)**

Item	No. of Item	Fixed Unit Rate	Total
PLM - TAT 72 hour	34	\$12.00	\$408.00
Point Count (400 pts) - TAT 3 to 5 days		\$78.00	\$0.00
Lead - Total (AA) - TAT 24 hr [paint chip]	4	\$12.50	\$50.00
Equipment (All Rates are per day except where noted)			
XRF	1	\$195.00	\$195.00
Shipping		\$30.00	\$0.00
Office Consumables	1	\$50.00	\$50.00
<b>Total Other Costs</b>			<b>\$703.00</b>
<b>TOTAL TASK 1</b>			<b>\$1,623.00</b>

**Task 2 : Data Analysis/Report Phase - *Hazardous Materials Survey Report*****Labor**

Labor Category	Description of Work	No. of Hours	Hourly Rate per	Total
Principal			\$175.00	\$0.00
Registered Professional (CIH, CSP, PE, AIA)	Report Review	1	\$150.00	\$150.00
Senior Professional Level - (Eng./IH/Envir. Specialist)			\$125.00	\$0.00
Project Professional Level - (Eng./IH/Envir. Specialist)	Report	3	\$105.00	\$315.00
Senior Staff Level - (Eng./IH/Envir. Specialist)			\$95.00	\$0.00
Staff Level - (Eng./IH/Envir. Specialist)			\$85.00	\$0.00
Sr. Field Technician			\$75.00	\$0.00
Field Technician			\$65.00	\$0.00
Autocad/Graphics Specialist	Drawings	3	\$65.00	\$195.00
Administrative Support Specialist	Clerical, Data Entry, etc.	2	\$50.00	\$100.00
<b>Total Labor Costs</b>				<b>\$760.00</b>

**Other Costs**

Item	No. of Item	Fixed Unit Rate	Total
Shipping	0	\$25.00	\$0.00
Office Consumables	0	\$15.00	\$0.00
<b>Total Other Costs</b>			<b>\$0.00</b>
<b>TOTAL TASK 2</b>			<b>\$760.00</b>

Professional Services - <i>Environmental &amp; Industrial Hygiene Consulting</i>	
Project:	East Side UHSD - Independence Adult Center
Proposal Due Date:	10/13/2016
IH Firm:	MILLENNIUM CONSULTING ASSOCIATES
Contact:	Jack McCubbin/Lee Ann Norman
Email Address:	<a href="mailto:jmccubbin@mecaenviro.com">jmccubbin@mecaenviro.com</a> <a href="mailto:lnorman@mecaenviro.com">lnorman@mecaenviro.com</a>
Scope of Work:	Provide environmental industrial hygiene services in conformance with the proposal P16-2310 for detailed scope of work.
Task 3: Design Phase - <i>Hazmat Document Development</i>	
TOTAL TASK 3	TBD
Task 4: Client Support Phase: <i>Bid Review/Special Services</i>	
TOTAL TASK 4	TBD
Task 5: Field Services Phase: Construction Observation/Abatement Monitoring Services	
TOTAL TASK 5	TBD
Task 6: Project Closeout Phase: <i>Closeout Report</i>	
TOTAL TASK 6	TBD
TOTAL TASKS 1 - 2	
\$2,383.00	

**MILLENNIUM CONSULTING ASSOCIATES - TERMS & CONDITIONS**  
**("MILLENNIUM", A MECA CONSULTING INC. COMPANY)**

**1. CLIENT DEFINITION**

CLIENT as used herein shall include and apply to all parties equally, be they individuals, corporations, partnerships, associations, government agencies, or other entities, whether acting alone or collectively as a group where the services of this Agreement are being provided to, or on behalf of, the group.

**2. STANDARD OF CARE**

Services performed by MILLENNIUM will be conducted in a manner consistent with that level of care and skill ordinarily exercised by other members of the engineering and science professions currently practicing under similar conditions and in the same locality, subject to the time limits and financial, physical or any other constraints applicable to the Services. No warranty, express or implied is made.

**3. INVOICES AND PAYMENT TERMS**

MILLENNIUM will submit monthly invoices to CLIENT and a final bill upon completion of Services. CLIENT shall notify MILLENNIUM within ten (10) days of receipt of invoice of any dispute with the invoice. CLIENT and MILLENNIUM will promptly resolve any disputed items. Payment on undisputed invoice amounts is due upon receipt of invoice by CLIENT and is past due thirty (30) days from the date of the invoice. CLIENT agrees to pay a finance charge of one and one-half percent (1½%) per month, on past due accounts. If payment remains past due sixty (60) days from the date of the invoice, then MILLENNIUM shall have the right to suspend all work under this Agreement, without prejudice. CLIENT will pay all reasonable demobilization and other suspension costs. CLIENT agrees to pay attorneys fees, legal costs and all other collection costs incurred by MILLENNIUM in pursuit of past due payments. If the cost estimate for a project is time and materials (with a not-to-exceed limit), and the estimate is broken down into budgets for specific tasks, the task budgets may be exceeded without CLIENT authorization as long as the total limitation is not exceeded.

**4. CHANGES**

CLIENT and MILLENNIUM recognize that it may be necessary to modify the scope of Services and the schedule proposed in this Agreement. Such changes could change the scope of Services, personnel, limitations, schedule, and/or the cost, as may be equitable under the circumstances. MILLENNIUM shall notify CLIENT when it has reason to believe a change to the Agreement is warranted. MILLENNIUM shall prepare a Change Order request outlining the changes to the scope, schedule, and/or cost of the project. CLIENT has a duty to promptly consider the Change Order request and advise MILLENNIUM in a timely manner in writing on how to proceed. If after a good faith effort by MILLENNIUM to negotiate modifications to the scope of Services, the schedule, and/or the cost estimate, an agreement has not been reached with the CLIENT, then MILLENNIUM shall have the right to terminate this Agreement upon written notice to the CLIENT.

**5. DELAYS AND FORCE MAJEURE**

If site conditions prevent or inhibit performance of Services or if unrevealed hazardous waste materials or conditions are encountered, Services under this Agreement may be delayed. Any such delays, and any delays caused by CLIENT and its subcontractors, consultants, agents, officers, directors and employees, shall extend the contract completion.

CLIENT shall not hold MILLENNIUM responsible for damages or delays in performance caused by acts of God, acts and/or omissions of Federal, State and local governmental authorities and regulatory agencies or other events that are beyond the reasonable control of MILLENNIUM. For this purpose, such acts or events shall include, but not be limited to, storms, floods, epidemics, war, riot, strikes, lockouts or other industrial disturbances, and inability with reasonable diligence to supply personnel, information, or material to the project. Should such acts or events occur, it is agreed that MILLENNIUM shall use reasonable efforts to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit and schedule of the Services covered by this Agreement. Delays in excess of thirty (30) days within the scope of this Article shall, at the option of either party, make this Agreement subject to termination or to renegotiation.

**6. DATA AND INFORMATION**

CLIENT shall provide to MILLENNIUM all the reports, data, studies, plans, specifications, documents and other information, which are relevant to the Services. MILLENNIUM shall be entitled to rely upon the reports, data, studies, plans, specifications, documents and other information provided by CLIENT or others in performing the Services and, MILLENNIUM assumes no responsibility or liability for the accuracy or completeness of such. CLIENT waives any claim against MILLENNIUM, and agrees to defend, indemnify and hold MILLENNIUM harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in reports, data, studies, plans, specifications, documents or other information provided to MILLENNIUM by CLIENT. MILLENNIUM will not be responsible for any interpretations or recommendations generated or made by others, which are based, whole or in part, on MILLENNIUM's data, interpretations or recommendations.

**7. PROFESSIONAL WORK PRODUCT**

The Service provided by MILLENNIUM is intended for one time use only. All documents, including but not limited to, reports, plans, designs, boring logs, field data, field notes, laboratory test data, calculations, and estimates (the "Documents") and all electronic media prepared by MILLENNIUM are considered its professional work product. MILLENNIUM retains all rights to its professional work product. Copies of Documents shall be provided to CLIENT upon written request and at Client's expense. MILLENNIUM will retain these Documents for a period of two (2) years following submission of its report, during which period they will be made available to CLIENT at all reasonable times.

CLIENT acknowledges that electronic media is susceptible to unauthorized modification, deterioration, and incompatibility and therefore CLIENT cannot rely upon the electronic media version of MILLENNIUM's professional work product. CLIENT understands that the professional work product is not intended or represented by MILLENNIUM to be suitable for reuse by any party, including, but not limited to, the CLIENT, its employees, agents, subcontractors or subsequent owners on any extension of a specific project not covered by this Agreement or on any other project, whether Client's or otherwise, without MILLENNIUM's prior written permission. CLIENT agrees that any reuse unauthorized by MILLENNIUM will be at CLIENT'S sole risk and that CLIENT will defend, indemnify and hold MILLENNIUM harmless from any loss or liability resulting from the use, misuse or negligent use of the professional work product.

Under no circumstances does this Agreement or the Services provided herein provide any express or implied rights to third-party beneficiaries.

**8. INDEPENDENT JUDGMENTS OF CLIENT**

If the Services include the collection of samples and data relative to Client's contemplated purchase or sale of certain property, then MILLENNIUM performs the Services with Client's understanding of the Subsurface and other Risks. MILLENNIUM will not be responsible for the independent conclusions, interpretations, interpolations and/or decisions of CLIENT, or others, which are the result of this effort, MILLENNIUM does not undertake any Services which would result in any recommendation, advice or direction by MILLENNIUM as to whether CLIENT should or should not proceed to purchase or sell the site in question, but it is understood that CLIENT intends to utilize the data provided by MILLENNIUM to make its own independent judgment in that respect.

**9. INSURANCE AND INDEMNITY**

MILLENNIUM maintains and shall continue to maintain during the performance of this Agreement its standard insurance coverage as follows:

- Workers' Compensation insurance in compliance with statutory limits
- Employers' liability with the following limits:
- Business Automobile Liability with the following limits:

Each Accident \$1,000,000  
Combined Single Limit \$1,000,000

- Commercial General Liability with the following limits:
- General Aggregate \$2,000,000
- Professional Liability Insurance with the following limits:

Each Occurrence \$1,000,000

Any One Claim \$1,000,000  
Policy Aggregate \$2,000,000

CLIENT shall not require MILLENNIUM to sign any document or perform any Service, which in the judgment of MILLENNIUM would risk the availability or increase the cost of its professional or general liability insurance.

CLIENT shall, at all times, defend, indemnify and save harmless MILLENNIUM and its subcontractors, consultants, agents, officers, directors and employees from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, court and arbitration costs, arising out of or resulting from the Services of MILLENNIUM, inclusive of claims made by third parties, or any claims against MILLENNIUM arising from the acts, errors or omissions of CLIENT, its employees, agents, contractors and subcontractors. To the fullest extent permitted by law, such indemnification shall apply regardless of strict liability of MILLENNIUM. Such indemnification shall not apply to the extent such claims, damages, losses or expenses are finally determined to result from MILLENNIUM's negligence.

MILLENNIUM shall, at all times, defend, indemnify and save harmless CLIENT and its officers, directors, agents and employees from and against all claims, damages, losses and expenses arising from personal injury, death, or damage to third-party property to the extent directly attributable to the negligent acts, errors or omissions of MILLENNIUM.

#### 10. LIMITATION OF LIABILITY

CLIENT shall immediately notify MILLENNIUM of any deficiencies or suspected deficiencies arising directly or indirectly from MILLENNIUM's negligent acts, errors or omissions. Failure by CLIENT to notify MILLENNIUM shall relieve MILLENNIUM of any further responsibility and liability for such deficiencies. CLIENT and MILLENNIUM agree that all liability arising directly or indirectly from this Agreement or the Services of MILLENNIUM shall expire no later than one (1) year from the date of MILLENNIUM's acts, errors, or omissions or prior to the last date allowed in the applicable statute of limitation, whichever occurs first in time.

THE SERVICES AND THE WORK PRODUCT OF MILLENNIUM ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF MILLENNIUM, ITS MANAGERS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE FEES PAID BY CLIENT TO MILLENNIUM PURSUANT TO THIS CONTRACT. IN NO EVENT SHALL MILLENNIUM BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MATERIALS OR THE SERVICES PROVIDED BY MILLENNIUM, EVEN IF MILLENNIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### 11. RIGHT OF ENTRY

CLIENT will provide for the right of entry for MILLENNIUM, its subcontractors, and all necessary equipment in order to complete the Services under this Agreement. If CLIENT does not own the site, CLIENT must obtain remission for MILLENNIUM to enter the site and perform the Services. While MILLENNIUM will take all reasonable precautions to minimize any damage to the property, it is understood by CLIENT that in the normal course of work some damage may occur, the restoration of which is not part of this Agreement.

#### 12. SUBSURFACE AND OTHER RISKS

Special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program implemented in accordance with a professional Standard of Care may fail to detect certain conditions. The environmental, geologic, geotechnical, geochemical and/or hydrogeologic conditions that MILLENNIUM interprets to exist between sampling points may differ from those that actually exist. Furthermore, CLIENT recognizes that, passage of time, natural occurrences, direct or indirect human intervention at or near the site may substantially alter discovered conditions.

In the prosecution of the Services, MILLENNIUM will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities. CLIENT agrees to defend, indemnify and hold MILLENNIUM harmless for any damage to subterranean structures or utilities and for any impact this damage may cause, except to the extent the damage is directly attributable to the negligence of MILLENNIUM.

Subsurface sampling may result in unavoidable contamination of certain subsurface areas not known to be previously contaminated such as, but not limited to, a geologic formation, the groundwater, or other hydrous body. Because subsurface sampling is a necessary aspect of the work which MILLENNIUM may perform on Client's behalf, CLIENT waives any claim against MILLENNIUM, and agrees to defend, indemnify and hold MILLENNIUM harmless from any claim or liability for injury or loss which may arise as a result of alleged cross-contamination caused by any subsurface investigation. CLIENT further agrees to compensate MILLENNIUM for any time spent or expenses incurred by MILLENNIUM in defense of any such claim, in accordance with MILLENNIUM's prevailing fee schedule and expense reimbursement policy.

Similar risks as noted above apply to air, water and other media assessments conducted aboveground. Any air and/or water testing regimen may fail to detect certain conditions. Also, the passage of time, natural occurrences and/or direct or indirect intervention at or near the site may substantially alter the results of assessments conducted by MILLENNIUM or others.

#### 13. DISPOSAL OF SAMPLES, MATERIALS AND CONTAMINATED EQUIPMENT

All uncontaminated samples obtained pursuant to this Agreement remain the property and responsibility of CLIENT. These soil and rock samples or other specimens will be disposed of 60 days after submission of the report. Upon written request, MILLENNIUM will store samples for longer periods of time or transmit the samples to CLIENT for a mutually acceptable charge.

All contaminated samples and materials (containing or potentially containing hazardous constituents), soil cuttings, contaminated water, and/or other environmental wastes obtained pursuant to this Agreement remain the property and responsibility of CLIENT and shall be returned to CLIENT for proper disposal. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of CLIENT. All such equipment shall be charged and turned over to CLIENT for proper disposal. Alternate arrangements to turn such equipment, materials and/or samples directly over to a licensed hazardous waste disposal facility may be made at Client's direction and expense. It is understood and agreed that MILLENNIUM is not, and has no responsibility as, a handler, generator, operator, treater, storer, arranger, transporter, or disposer of hazardous or toxic substances, waste or materials found or identified at the site. CLIENT agrees to indemnify and hold MILLENNIUM harmless from and against all loss, damage, expense, and claims arising out of the disposal of all such samples, materials and equipment.

#### 14. CONTROL OF WORK AND JOB-SITE SAFETY

MILLENNIUM shall be responsible only for its activities and that of its employees and subcontractors. MILLENNIUM's Services under this Agreement are performed for the sole benefit of the CLIENT and no other entity shall have any claim against MILLENNIUM because of this Agreement or the performance or nonperformance of Services hereunder. MILLENNIUM will not direct, supervise or control the work of other consultants and contractors or their subcontractors. MILLENNIUM does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any other contractor, subcontractor, supplier or other entities furnishing materials or performing any work on the project.

Insofar as job site safety is concerned, MILLENNIUM is responsible only for the health and safety of its employees and subcontractors. Nothing herein shall be construed to relieve CLIENT or any other consultants or contractors from their responsibilities for maintaining a safe job site. MILLENNIUM shall not advise on, issue directions regarding, or assume control over safety conditions and programs for others at the job site. Neither the professional activities of MILLENNIUM, nor the presence of MILLENNIUM or its employees and subcontractors, shall be construed to imply that MILLENNIUM controls the operations of others or has any responsibility for job site safety.

#### 15. PUBLIC RESPONSIBILITY

CLIENT has a duty to conform to applicable codes, standards, regulations and ordinances, with regard to public health and safety. While MILLENNIUM performs the Services, it will endeavor to alert CLIENT to any matter of which MILLENNIUM becomes aware and believes requires Client's immediate attention to help protect public health and safety, or which MILLENNIUM believes requires CLIENT to issue a notice or report to certain public officials, or to otherwise conform with applicable codes, standards, regulations or ordinances. If CLIENT decides to disregard MILLENNIUM's recommendations in these respects, MILLENNIUM shall employ its best judgment in deciding whether or not it should notify public officials. If CLIENT decides to disregard MILLENNIUM's recommendations, MILLENNIUM shall have the right to immediately terminate this Agreement upon written notice to the CLIENT.

#### 16. NOTIFICATION AND DISCOVERY OF HAZARDOUS MATERIALS

Prior to commencing the Services, CLIENT shall furnish to MILLENNIUM all documents and information known to CLIENT that relate to the identity, location, quantity, nature or characteristics of any hazardous materials, *suspected* hazardous materials, or other hazards, on or under the site. CLIENT hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed MILLENNIUM.

CLIENT recognizes that hazardous materials or suspected hazardous materials may be discovered on the project site property or on any adjacent property to the site. CLIENT recognizes that it is Client's responsibility, and not MILLENNIUM's, to inform the Owner of any affected property not owned by CLIENT of such discovery. CLIENT also recognizes that any such discovery may result in a significant reduction of the property's value. CLIENT waives any claim against MILLENNIUM and agrees to defend, indemnify and hold harmless MILLENNIUM from any claim or liability for injury or loss of any type arising from the discovery of hazardous materials or suspected hazardous materials on Client's property or on property not owned by CLIENT. CLIENT agrees that discovery of unanticipated hazardous materials shall constitute a changed condition for which MILLENNIUM shall be fairly compensated.

#### 17. TERMINATION

This Agreement may be terminated by either party upon written notice in the *event* of substantial failure by the other party to perform in accordance with terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice, such period shall not be less than seven (7) calendar days. In the event of termination, MILLENNIUM shall be paid for services performed to the termination notice date, reasonable termination expenses, and a portion of its anticipated profits not less than the percentage of the contract services performed as of the termination notice date. MILLENNIUM may complete such analyses and records as are necessary to complete their files and may also complete a report on the Services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of MILLENNIUM in completing such analyses, records and reports.

18. Attorneys' Fees. In the event any party hereto shall bring any action or proceeding against any other party (or permitted assignee) to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and necessary disbursements (whether incurred before commencement of litigation, at trial, on appeal, or in enforcing a judgment against the other party) in addition to any other relief to which such party is entitled. The provisions of this section providing for post-judgment attorneys' fees shall survive any judgment and shall not be deemed merged into any judgment. This provision regarding attorneys' fees is applicable to the entire Agreement.

#### 19. CLIENT LITIGATION

If MILLENNIUM is requested to produce documents, witnesses or general assistance pursuant to a litigation, arbitration or mediation in support of CLIENT litigation to which MILLENNIUM is not an adverse party, CLIENT shall reimburse MILLENNIUM for all direct *expenses* and time in accordance with MILLENNIUM's current rate schedule.

#### 20. CONFIDENTIALITY

MILLENNIUM will endeavor to keep confidential all data and information which is marked confidential and furnished to MILLENNIUM by CLIENT under this Agreement. MILLENNIUM's confidentiality obligations shall not apply if such data or information is within the public domain, previously known to MILLENNIUM, obtained from third parties without violating any confidentiality agreement, required to be produced by MILLENNIUM pursuant to any law, subpoena, or court order or required by MILLENNIUM in the defense of any claim. MILLENNIUM may use and publish the Client's name and give a general description of the Services rendered by MILLENNIUM for the purpose of informing other clients and potential clients of MILLENNIUM's experience and qualifications.

#### 21. INTELLECTUAL PROPERTY

All rights to patents, trademarks, copyrights, and trade secrets owned by MILLENNIUM (hereinafter "Intellectual Property") as well as any modifications, updates or enhancements to said Intellectual Property during the performance of the Services remain the property of MILLENNIUM, and MILLENNIUM does not grant CLIENT any right or license to such Intellectual Property. MILLENNIUM shall use reasonable efforts to provide the Services without infringing on any valid patent or copyright and without the use of any confidential information that is the property of others, unless MILLENNIUM or its agents, employees or subcontractors are licensed or otherwise have the right to use and dispose of such information. MILLENNIUM shall also use reasonable efforts to inform the CLIENT of any patent infringement that may be reasonably expected to result from the Services. However, reasonable efforts of MILLENNIUM shall not include a duty to conduct or prepare a patent or copyright search and/or opinion. If MILLENNIUM performs its Services in a manner consistent with the above, then to the fullest extent permitted by law, CLIENT shall indemnify, defend and hold harmless then MILLENNIUM and its officers, directors, agents and employees against all liability, cost, expense, attorneys' fees, claims, loss or damage arising from any alleged or actual patent or copyright infringement resulting from the Services under this Agreement.

#### 22. MISCELLANEOUS

- a) This Agreement supersedes all other agreements, oral or written, and contains the entire agreement of the parties. No cancellation, modification, amendment, deletion, addition, waiver or other change in this Agreement shall have effect unless specifically set forth in writing signed by the party to be bound thereby. Titles in this Agreement are for convenience only.
- b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns provided that it may not be assigned by either party without consent of the other. It is expressly intended and agreed that no third party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this Agreement.
- c) No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.
- d) All representations and obligations (including without limitation the obligation of CLIENT to indemnify MILLENNIUM in Article 9 and the Limitation of Liability in Article 10) shall survive indefinitely the termination of the Agreement.
- e) Any provision, to the extent it is found to be unlawful or unenforceable, shall be stricken without affecting any other provision of the Agreement, so that the Agreement will be deemed to be a valid and binding agreement enforceable in accordance with its terms.
- f) All questions concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of California, unless the law of another jurisdiction must apply for this Agreement to be enforceable.
- g) Parties agree that this Agreement has been entered into in Contra Costa County, California, and hereby stipulate to venue in Contra Costa County, California.
- h) Client, and the person executing this Agreement on behalf of Client, represents and warrants that the person executing this Agreement is duly authorized and has authority to execute this Agreement.

END