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**FRESNO COUNTY RURAL TRANSIT AGENCY (FCRTA)
MEETING AGENDA**

DATE: Thursday, October 25, 2018
TIME: 5:30pm, **AFTER** the Fresno Council of Governments (FCOG) Meeting
PLACE: FCOG / FCRTA Offices
Sequoia Conference Room
2035 Tulare Street, Suite 201
Fresno, CA 93726
*(Corner of Tulare and Van Ness Ave. - above Club One
Park in Underground Garage - Entrance off Tulare & Van Ness Ave.
Exit Elevator on Tulare St., Turn Left, Enter Lobby Door,
Up Elevator to Second Floor, Left to Sequoia Conference Room)*

Americans with Disabilities Act (ADA) Accommodation

The Fresno COG / FCRTA offices and restrooms are ADA accessible. Individuals with disabilities may call (559-233-4148) / FCRTA (559-233-6789) at least 3 days in advance, to request auxiliary aids and/or translation services necessary to participate in the public meeting / public hearing. If Fresno COG / FCRTA are unable to accommodate an auxiliary aid or translation request for a public hearing after receiving proper notice, the hearing will be continued on a specified date when accommodations are available.

AB 23 Requirement: In accordance with the Brown Act and AB23 the amount of stipend paid to members of the Board of Directors for attending this meeting of the Fresno County Rural Transit Agency, is \$50.00.

1. ROLL CALL

Public Presentations - This portion of the meeting is reserved for persons wishing to address the FCRTA Board on items within its jurisdiction but not on this Agenda.

NOTE: The public may also comment on any Agenda item, as they are presented, prior to action by the FCRTA Board.

2. CONSENT ITEMS

A. Approve Executive Minutes of September 27, 2018 [ATTACHMENT]

3. ACTION ITEMS

A. Acquisition of Additional Land in the City of Selma for Maintenance Facility [APPROVE]

Summary: The City of Selma has been designated the preferred location for the FCRTA maintenance facility. Staff has entered into a purchase agreement for the site with a leaseback agreement for a portion of the site with the existing City of Selma Fire Department training facility located at 1821 Pacific Avenue, Selma totaling 3.67 acres. The Board approved in September for staff to pursue negotiations for the surrounding three (3) parcels to construct the maintenance facility and provide space for the 100 plus vehicle fleet, a CNG fast fill fueling station, an electric vehicle (EV) charging area and vocational center for bus repair and new technology training. Staff has pursued negotiations with the private property owner to purchase the middle parcel of 1.41 acres for the maintenance facility and vehicle fleet.

In addition, FCRTA needs to move forward with a Phase I Environmental Site Assessment (ESA) for the middle parcel as well as the other two (2) remaining parcels when staff is able to negotiate the purchase for all parcels. A Phase I ESA was previously advised by FCRTA's real estate legal counsel, Best, Best & Krieger (BBK) for the 3.67 acres. The land parcel map and Phase I ESA Proposal are attached for your review (**ATTACHMENT**).

Action: Staff recommends Board approval for the purchase of the middle parcel of 1.41 acres for \$200,000. Staff also recommends Board approval of the Phase I ESA (\$2,575.00) for the middle parcel which includes the two (2) other remaining parcels when FCRTA is able to purchase the remaining parcels.

4. OTHER BUSINESS

A. Items from staff.

B. Items from members.

5. ADJOURNMENT



FRESNO COUNTY RURAL TRANSIT AGENCY (FCRTA)

Executive Minutes

Thursday, September 27, 2018 at 7:30 PM before COG Policy Board Meeting
COG Sequoia Conference Room
2035 Tulare St., Suite 201, Fresno, CA 93721

Members Attending:

Councilmember Ron Lander, City of Coalinga
Mayor Felipe Perez, City of Firebaugh
Mayor David Cardenas, City of Fowler
Supervisor Sal Quintero, Fresno County
Councilmember Daniel Tomayo, City of Huron
Mayor Michelle Roman, City of Kingsburg
Councilmember Robert Silva, City of Mendota
Mayor Victor Lopez, City of Orange Cove
Councilmember Robert Beck, City of Reedley
Mayor Frank Gonzalez, City of Sanger
Mayor Pro Tem Amarpreet Dhaliwal, City of San Joaquin
Mayor Pro Tem Scott Robertson, City of Selma

Moses Stites, General Manager
Kyle Roberson, County Counsel
Janelle Del Campo, Associate Transit Planner FCRTA
Jeaneen Cervantes, FCOG

Absent:

Mayor Rhonda Armstrong, City of Kerman
Mayor Alma Beltran, City of Parlier

QUORUM: At the start of the meeting there were 12 members present representing 100% of the population and there was a quorum to conduct business. (Coalinga, Firebaugh, Fowler, Fresno County, Huron, Kingsburg, Mendota, Orange Cove, Reedley, Sanger, San Joaquin, Selma)

1. **ROLL CALL** — Meeting called to order at 6:47 p.m.
Public Presentation — This portion of the meeting is reserved for persons wishing to address the FCRTA Board on items within its jurisdiction but not on the Agenda.

Note: The public may also comment on any Agenda Item, as they are presented, prior to action by the FCRTA Board.

2. CONSENT ITEMS

- A. Approve Executive Minutes of July 26, 2018 (ATTACHMENT)
- B. Public Benefit Grant Program and Clean Vehicle Rebate Project [APPROVE]
- C. 2018-19 Federal Transit Administration (FTA) Section 5311 Application Revision [APPROVE]
- D. Long Range Transit Plan (LRTP) Project List [INFORMATION]
- E. Transition Update [INFORMATION]
- F. Appointment of FCRTA General Manager to Fresno State Transportation Institute's Advisory Board [INFORMATION]

A motion was made by Mayor Roman (Kingsburg) and second by Councilmember Lander (Coalinga). Supervisor Quintero (Fresno Co) absent from vote. A vote was called and motion carried.

3. ACTION ITEMS

A. STATE OF GOOD REPAIR APPLICATION [APPROVE]

FCRTA is proposing a project submittal for \$284,279 in State Transit funding thru SB1 State of Good Repair Application (SGR) to fund the land purchase and a new bus maintenance facility with a CNG fast-fill fueling station and EV charging station area in addition to the local match of \$2,100,000.00 of Measure C carry over and \$287,482 from the 2017-18 State of Good Repair funds which brings the total to approximately \$2,671,761. We have attached the application for your review.

Councilmember Beck (Reedley) had a question for Moses- he understands that there will be a change with this. Are we still going to be allowed to use CNG after the fossil fuel situation?

Moses replied they will because of ARB is pushing the zero emission vehicles at 100%, the CNG is close to 100% but not quite at 100% it's more at 96% and renewable natural gas and CNG are still going to be viable options. FCRTA is in the process of upgrading the CNG stations in your maintenance yards. We are going to open a fast fill location one toward the farther east and the other farther west of Fresno County.

A motion was made by Mayor Cardenas (Fowler) and second by Mayor Pro Tem Robertson (Selma). A vote was called and motion carried.

B. ACQUISITION OF ADDITIONAL LAND IN THE CITY OF SELMA FOR MAINTENANCE FACILITY [APPROVE]

Moses requested authorization to have staff look at the other parcels adjacent to the parcel we are purchasing from the City of Selma. Selma Unified is adjacent to the parcel that we are currently in the process of obtaining. Mayor Pro Tem Silva (Mendota) was part of this committee that we went to. We are looking at the adjacent three parcels next to the one that we are going to purchase from the City of Selma which is 3.67 acres. I have spoken to the landowners and they have been in touch with the City of Selma. Their concern was where was the Fire Training Station relocating to.

I would like to get the Board's direction so we could move forward with the other 3 other parcels that would make it 10 acres equal to the Selma Unified School District.

Mayor Roman (Kingsburg) inquired if Moses had pursued the schools regarding the vocational school. Moses replied the State & Electrify America is interested and the schools will be contacted.

Mayor Pro Tem Dhaliwal (San Joaquin) asked Moses about numbers to the specific parcels? Moses responded it would range approximately \$250,000 for the 3.6 acres through the City of Selma with relocation of the training fire station we are looking at approximately \$400,000 - \$600,000 for the other acreage/parcels.

Mayor Pro Tem Dhaliwal (San Joaquin) asked if it is one party. Moses replied it is 3 different parcels with 3 different parties – one party is interested in selling however it wouldn't be until the first of the year due to taxes. Moses let the party know he would take it to the Policy Board to get direction.

Mayor Pro Tem Dhaliwal (San Joaquin) asked if FCRTA need one additional parcel? Moses responded that FCRTA needed the three parcels.

Mayor Pro Tem Silva (Mendota) asked if this was the one that he went to the Countywide Oversight Board and took action, is that the same address? Moses said it is the same address but different parcels, Mayor Pro Tem (Mendota) wanted to know if that was the same one that he had voted on and if he would be abstained from voting on this issue. Moses replied he would be able to vote on this as well.

Mayor Pro Tem Dhaliwal (San Joaquin) added the vision for this is to expand the maintenance and add vocational programs as well.

A motion was made by Council Member Beck (Reedley) and second by Mayor Pro Tem Robertson (Selma). A vote was called and motion carried.

C. **RURAL TRANSIT SERVICE FARE INCREASE [APPROVE]**

Moses advised the Board that FCRTA has not had a fare increase since the rural transit service began in 2014 and would like to increase the fares for the Rural Transit from \$2.50 to \$5.00. Mayor Roman (Kingsburg) was concerned about the increase and how it would affect the residents? Mayor Lopez (Orange Cove) also agreed with Mayor Roman (Kingsburg).

Moses and the all Mayors came to an agreement the increase would be from \$2.50 to \$3.00 effective October 29, 2018 and the fares would be increased incrementally.

A motion was made by Mayor Cardenas (Fowler) and second by Mayor Lopez (Orange Cove). A vote was called and motion carried.

4. **ELECTION**

All board members voted to keep the same members in office.

A motion was made by Mayor Lopez (Orange Cove) and second by Mayor Pro Tem Robertson (Selma). A vote was called and motion carried.

5. **CLOSED SESSION**

6. **OPEN SESSION**

7. **OTHER BUSINESS**

A. Staff

Janelle Del Campo let the board know that on Wednesday, September 26th, FCRTA provided a tour and presentation to a group of over 20 people that included local air district staff as well as other air district and CARB staff from all over the state. The tour was given in one of our 40ft Proterra electric buses and we stopped in Fowler at one of the solar arc charging stations and they were able to see one of the Zenith electric vans that was in service at the time in Fowler. We also stopped in Selma to show another solar arc, solar bus shelter, dispatching center and our future maintenance facility. The group shared that they were very impressed and had a great time on the tour and we hope that it leads to more future funding.

B. Member

Mayor Gonzalez (Sanger) let the board know that Sanger will be holding a job fair at the Sanger Community Center on Tuesday October 23, 2018 from 2:30 pm to 5:30 pm

8. **ADJOURNMENT**

Meeting adjourned at 7:30

A motion was made by Mayor Lopez (Orange Cove) and second by Mayor Pro Tem Robertson (Selma). A vote was called and motion carried.

Respectfully Submitted,



Moses Stites
General Manager

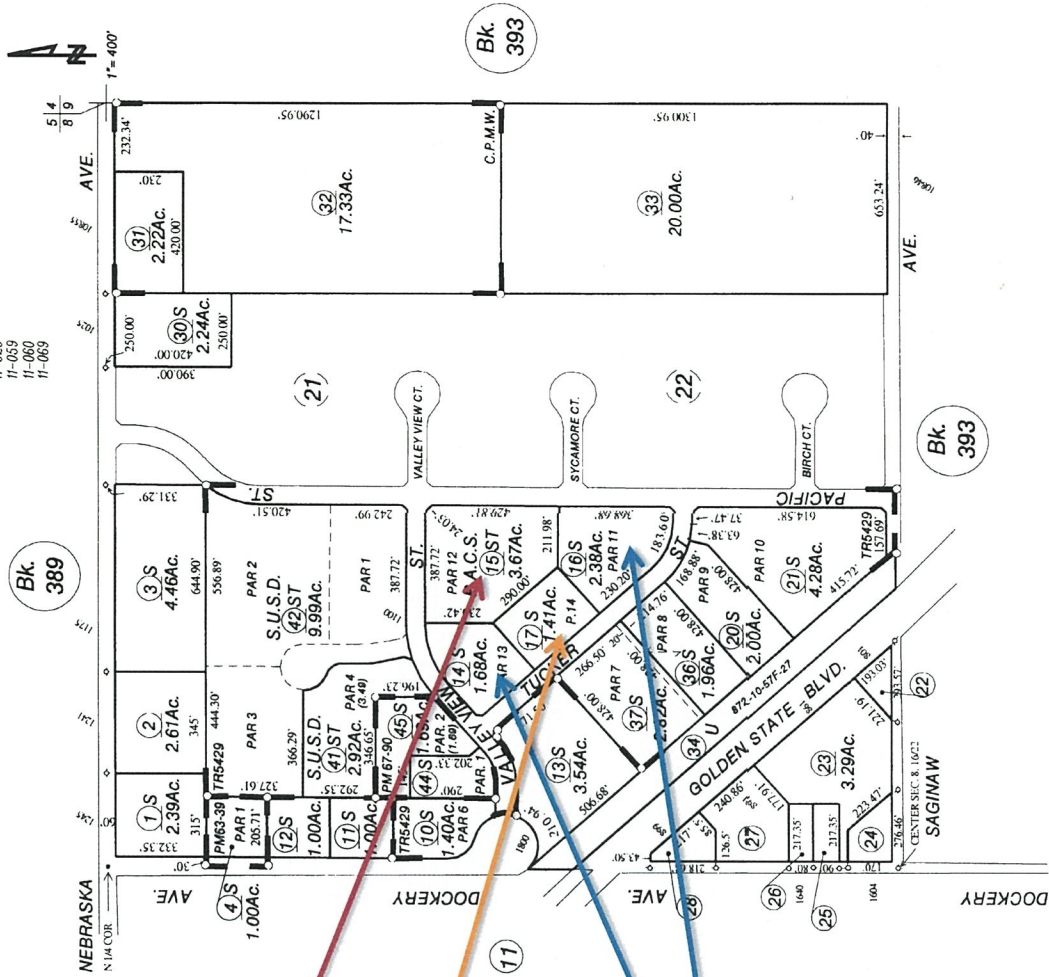
Parcel Map City of Selma for FCRTA Maintenance Facility

SUBDIVIDED LAND & POR. SEC. 8, T.16S., R.22E., M.D.B.& M.

Tax Rate Area
11-015 180-000
11-029
11-059
11-060
11-069

390-19

NOTE
This map is for Assessment purposes only.
It is not to be construed as portraying
legal ownership or divisions of land for
purposes of zoning or subdivision law.



3.67 acres FCRTA is purchasing from the City of Selma

1.41 acre parcel FCRTA is proposing to purchase from a private property owner

Remaining parcels FCRTA would like to purchase from private property owners totaling 4.06 acres

Certificate of Parcel Map Waiver No. 00-25, #153254, 10-18-01
Parcel Map No. 2003-0095 - Bk. 63, Pgs. 39-40
Parcel Map No. 2007-0054 - Bk. 67, Pgs. 90-91
Tract No. 5429 - Plat Bk. 71, Pgs. 3-4

Assessor's Map Bk. 390 - Pg. 19
R.A.C.S. = Redevelopment Agency - City of Selma
County of Fresno, Calif.
NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.



GEOTECHNICAL ENGINEERING • ENVIRONMENTAL ENGINEERING
CONSTRUCTION TESTING & INSPECTION

October 15, 2018

Proposal No. P18-334

Mr. Moses Stites
Fresno County Rural Transit Agency
2035 Tulare Street, Suite 201
Fresno, California 93721
mstites@fresnocog.org

RE: Proposal/Cost Estimate
Phase I Environmental Site Assessment
Acquisition Properties
APNs 390-190-14S, -16S and -17S/5.47 Acres
Southeast of Valley View and Tucker Streets
Selma, California

Dear Mr. Stites:

Krazan & Associates, Inc. (Krazan) appreciates the opportunity to submit this Proposal/Cost Estimate to conduct a Phase I Environmental Site Assessment (ESA) for the referenced site (subject site). Krazan has been conducting engineering and environmental inspection services for 35 years and ranked among the *Engineering News-Record* Top 500 Design Firms in 2018 for the eighteenth year in a row. Krazan's longevity is founded on excellent technical reporting and client satisfaction.

PURPOSE AND SCOPE

The Phase I ESA will be conducted in accordance with the current American Society for Testing and Materials (ASTM) Standard *Practice for Environmental Site Assessments* (E 1527-13) in accordance with the November 2005 Final Rule entitled "Standards and Practices for All Appropriate Inquiries" (AAI) as published by the U.S. Environmental Protection Agency (EPA).

COST AND TIMELINE

The Phase I ESA report can be completed within 20 to 25 business days upon Krazan's receipt of written authorization to commence work for a fee of \$1,700 plus \$500 for limitation of liability extension to \$1,000,000 for a total of \$2200. The ESA will be conducted in accordance with Krazan's Terms and Conditions described in the attached agreement.

Optional Environmental Lien Search: \$195 for the first parcel and \$90 for each parcel thereafter (identified by APN or address and depending on potential identification of separate property owners) in addition to Phase I ESA costs through AFX Corp, Inc. Costs for Environmental Lien Searches are optional and were not specified in estimated costs in this proposal. Please refer User's Responsibilities for an explanation of the optional Environmental Lien Search and to the final page of the attached agreement to request or decline optional Environmental Lien Search.

DELIVERABLES

The final copy of the Phase I ESA report will include an electronic copy and up to two bound copies upon request.

RELIANCE

At the request of Fresno County Rural Transit Agency we will issue a reliance letter authorizing a third party to rely on the contents of our report in support of your obtaining funding for the subject site. This reliance letter will be issued at no additional cost to you. Reliance letters may also be issued at Krazan & Associates' discretion for additional lenders and/or parties requiring reliance on the content of our report for an additional fee equal to 10 percent of the cost for the report per relying party. Reliance letters will be issued in our standard format and will condition the authorization to rely on our report based on the third parties' agreement to be bound to the terms and conditions of the Agreement between Fresno County Rural Transit Agency and Krazan & Associates as if the contract had been entered into by them directly. Krazan & Associates reserves the right to reject any requirement that we adopt and issue forms of reliance letters provided by lenders without the right to modify the document to comply with our business practices.

AUTHORIZATION

If this proposal meets with your approval, please sign and return the Agreement to us as our authorization to proceed. Please note that the limitation of liability clause under the heading of **Risk Allocation** on the enclosed Agreement is an integral part of our proposal and fee structure. This limitation of liability shall apply for services provided by Krazan & Associates on the subject project regardless of the form of agreement ultimately executed. The amount of the limitation may be negotiated for an additional fee. If a higher limitation is desired, please contact our office so a revised proposal can be prepared. Upon receipt of the signed contract, we will execute the Agreement and return a signed original for your files. Signing of the Agreement will indicate that an authorized agent of Fresno County Rural Transit Agency has reviewed the scope of services and determined that they do not need or want more services than are being proposed at this time. If there is a need for any change in the scope of services or schedule described in the proposal or in the standard contract, please call us immediately. Changes may require revision of the estimated fees.

In the event that the work is to be performed under an agreement originated by Fresno County Rural Transit Agency, the agreement or contract must be for the contracting of professional services. We request that a copy of the form of agreement be provided as soon as possible so that we can have an opportunity to review the terms without impacting scheduling of our services. Where work is to be authorized by Purchase Order, the Purchase Order must specifically incorporate this proposal by reference. By issuing a Purchase Order authorizing our services, it is agreed that the terms of the Purchase Order shall be null and void even where stated otherwise on the Purchase Order and that the terms of the attached Contract shall prevail. Should we be requested to start work prior to our receipt of a signed contract, your request to initiate services, which must be provided by fax or email, will indicate *express or implied* acceptance of the terms and conditions of our attached Agreement.

ADDITIONAL SERVICES

If additional services beyond those specifically included in our scope of services presented above are required, such as consultation with regulators beyond that typically included in the scope of services presented above, project meetings, review of data submitted after issuance of our report, collection of test specimen, laboratory tests or analyses, our fees for those services will be billed on a time and materials basis and under the terms and conditions of the Agreement established for our services on the project. Provision of additional services beyond the tasks originally contemplated at the time our proposal was issued may require your written authorization prior to our proceeding.

ACCEPTANCE

Krazan will initiate the investigation immediately upon receiving written authorization indicating your approval of this Proposal/Cost Estimate. Please indicate your acceptance by returning a signed copy of the attached Agreement. A fully executed copy of this Agreement will be returned to you. This proposal is valid for a period of 30 days after which Krazan reserves the right to modify its content.

We appreciate the opportunity to be of service to Fresno County Rural Transit Agency. If you have any questions or if I can be of further assistance, please feel free to contact me at 559-348-2200.

Respectfully submitted,
KRAZAN & ASSOCIATES, INC.



Arthur C. Farkas, REA
Environmental Division Manager

Attachments: User's Responsibilities
Krazan's Agreement for Professional Environmental Services

USER'S RESPONSIBILITIES

ESA

As the party seeking to use ASTM E 1527-13 to complete an ESA of the property, the client named herein as the user of the Phase I ESA has specific obligations for completing a successful application of this process. ASTM E 1527-13 states that certain tasks are required to be performed by the user that will help identify the possibility of recognized environmental conditions in connection with the subject site. These tasks do not require the technical expertise of an environmental professional and are generally not performed by the environmental professionals performing a Phase I ESA. Therefore, ASTM states that the user should either (1) engage a title company or title professional to undertake a review of reasonably ascertainable recorded land title records and lien records for environmental liens or activity and use limitations currently recorded against or relating to the property, or (2) request such an engagement of a title company or title professional from Krazan as an addition to this scope of work. According to ASTM, Chain of Title will not provide information regarding restrictions on title such as restrictive covenants, easements, or other types of activity and use limitations. Additionally, review of a Preliminary Title Report with attendant limitations may represent a data gap in the research. Consequently, costs proposed herein do not include procurement or review by Krazan of title report records or an environmental lien search for the subject site. However, Krazan offers the client the option to request a review of reasonably ascertainable recorded land title records and lien records as an additional task and cost as part of the attached proposal. An individual environmental lien search could be conducted for each different parcel comprising a subject site according to identification by assessor's parcel numbers (APNs) or addresses. Costs for this additional service are estimated on page No. 1.

In order to qualify for one of the *Landowner Liability Protections (LLPs)* offered by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (the *Brownfields Amendments*), the *user* must provide the following information (if available) to the *environmental professional*. Failure to provide this information could result in a determination that *all appropriate inquiry* is not complete. The user is asked to provide information or knowledge of the following:

1. Please provide appropriate and timely access to the subject site.
2. Please complete a User Questionnaire.
3. Environmental cleanup liens that are filed or recorded against the site.
4. Activity and land use limitations that are in place on the site or that have been filed or recorded in a registry.
5. Specialized knowledge or experience of the person seeking to qualify for the LLPs.
6. Relationship of the purchase price to the fair market value of the *property* if it were not contaminated.
7. Commonly known or *reasonably ascertainable* information about the *property*.
8. The degree of obviousness of the presence or likely presence of contamination at the *property*, and the ability to detect the contamination by appropriate investigation.

**AGREEMENT FOR PROFESSIONAL
ENVIRONMENTAL SITE ASSESSMENT CONSULTING SERVICES**

THIS AGREEMENT is made by and between KRAZAN & ASSOCIATES, INC., hereinafter referred to as “Consultant”, and Fresno County Rural Transit Agency, 2035 Tulare Street, Suite 201, Fresno, California, hereinafter referred to as “Client.” This Agreement between the parties consists of the TERMS AND CONDITIONS (below), the attached PROPOSAL titled “Phase I Environmental Site Assessment, Acquisition Properties, APNs 390-190-14S, -16S and -17S/5.47 Acres, Southeast of Valley View and Tucker Streets, Selma, California,” file number P18-334, dated October 15, 2018 (“PROPOSAL”), and any exhibits or attachments cited in the PROPOSAL, which are incorporated in full by this reference. This Agreement, executed in Clovis, CA, is effective as of the date this Agreement is countersigned by Krazan & Associates, Inc, or the date on which Consultant initiates services as scheduled by Client, whichever occurs earlier. The parties agree as follows:

1. DEFINITIONS

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

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

1.3. Services. The professional services provided by Consultant as set forth in this Agreement, the Scope of Services and any written Change Order, Task Order or amendment to this Agreement.

1.4. Fee Schedule. Consultant’s standard annual fee schedule unless project specific fee schedule is provided.

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

2. SCOPE OF SERVICES

Consultant will perform the Scope of Services set forth in the attached PROPOSAL.

2.1. Optional Services. As stated in Consultant’s PROPOSAL, the performance of Environmental Lien Search services is optional and requires specific authorization by Client if environmental lien searches are to be performed. Client shall designate if Environmental Lien Search services are to be provided as an additional service or are not to be provided by Consultant in Section 19, below.

2.2. Changes in Scope. If Consultant provides Client with a writing confirming a change in the PROPOSAL or the Services, it will become an amendment to this Agreement unless Client objects in writing within 5 business days after receipt. All Services performed by Consultant on the Project, whether requested and/or authorized by Client by oral or written communication, are subject to the terms and limitations of this Agreement. If Services are performed, but the parties do not reach agreement concerning modifications to the PROPOSAL, Services or compensation, then the terms and limitations of this Agreement apply to such Services, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 15, “Disputes.”

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

2.4. Excluded Services. Consultant’s Services under this Agreement include only those Services specified in the PROPOSAL.

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

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

2.5. Changes in Schedule. Because of the uncertainties inherent in the Services contemplated, time schedules are only estimated schedules and are subject to revision unless otherwise specifically stated in the PROPOSAL.

3. PAYMENTS TO CONSULTANT

3.1. Basic Services. Consultant will perform all Services set forth in the attached PROPOSAL, exclusive of the Optional Services as identified in the PROPOSAL and paragraph 2.1 above, on a lump sum/fixed fee basis as set forth therein.

3.2. Additional Services. Any additional services performed under this Agreement will be provided on a time and materials basis above and beyond any prior quoted estimate, not-to-exceed or lump sum fee unless otherwise specifically agreed to in writing by both parties.

3.3. Estimate of Fees. Consultant will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by Consultant. Client recognizes that changes in scope and schedule, and unforeseen circumstances can all influence the successful completion of Services within the estimated cost. The provision of an estimate of fees or a cost estimate is not a guarantee that the Services will be completed for that amount; Consultant’s Services shall continue on a time and expense basis to completion unless directed otherwise by Client. Furthermore, where a provision of a “not to exceed” limitation is included in the proposal it is not a guarantee that the Services will be completed for that amount; rather, it indicates that Consultant will not incur fees and expenses chargeable to Client in excess of the “not to exceed” limitation amount without notifying Client in writing that the “not-to-exceed” amount has been reached and that Services will continue on a time and materials basis unless directed by Client to discontinue any further Services.

3.4. Rates. Client will pay Consultant at the rates set forth in the Fee Schedule.

3.4.1. Changes to Rates. Client and Consultant agree that the Fee Schedule is applicable only through December 31 of the year published, unless stated otherwise in the PROPOSAL, and is subject to periodic review and amendment, as appropriate to reflect Consultant’s then-current fee structure. Unless otherwise provided for in the PROPOSAL, where projects are on-going beyond December 31 of the year the services were initiated, the rates presented in the PROPOSAL and Fee Schedule are subject to an annual cost of living adjustment based on the consumer price index for the geographic area where our services are being provided. In the event that the cost of fuel increases 10 percent or more over the course of the project a fuel surcharge may be imposed to recoup the added costs incurred by Consultant. Consultant will give Client at least 30 days advance notice of any changes. Unless Client objects in writing to the proposed amended fee structure within 30 days of notification, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client timely objects to the amended fee structure, and Consultant and Client cannot agree

upon a new fee structure within 30 days after notice, Consultant may terminate this Agreement and be compensated as set forth under Section 14, "Termination."

3.5. Payment Timing; Late Charge. Consultant shall invoice Client no more frequently than once per month for Services rendered. All invoices are due and payable upon receipt. Upon Consultant's approval of Client for 30-day payment terms Client shall pay undisputed portions of each progress invoice within thirty (30) days of the date of the invoice. The invoice amounts shall be presumed to be correct unless Client notifies Consultant in writing. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and promptly pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid. Payment thereafter will first be applied to accrued late payment charges interest on unpaid undisputed charges and then to the unpaid principal amount. Consultant reserves the right to apply payments to Client's outstanding invoices from oldest to most recent, regardless of project or invoice designation on checks received. All amounts unpaid when due will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law on the unpaid balance from the invoice date until the invoice is paid. Consultant reserves the right to require payment in full on any and all invoices on Client's account regardless of project prior to releasing field notes, laboratory test data, photographs, analyses and/or reports. All undisputed amounts due to Consultant by Client shall be paid in full prior to Consultant's release of final reports or other required forms of certified or verified reports. If the account becomes delinquent, the Client will reimburse Consultant for all time spent and expenses (including fees of any attorney, collection agency, and/or court costs) incurred in connection with collecting any delinquent amount. Consultant shall not be bound by any provision or agreement conditioning Consultant's right to payment upon payment by a third party. In the event of a legal action for invoice amounts not paid, attorneys' fees, court costs, and other related expenses shall be paid to the prevailing party. Client's failure to pay Consultant when due the failure to pay will constitute a substantial failure of Client to perform under this Agreement and Consultant will have the right to stop all current work and withhold letters, reports, or any verbal consultation until the invoice is paid in full. In the event that Client fails to pay Consultant within sixty (60) days after any invoice is rendered, Client agrees that Consultant will have the right to consider the failure to pay Consultant's invoice as a breach of this Agreement. If the Client requests back-up data or changes to the format of the standard invoice, an administrative fee of \$100 per invoice may be charged plus \$1 per page of back-up data.

4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES

4.1. Standard of Care. Subject to the limitations inherent in the agreed Scope of Services as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Consultant may perform its Services consistent with that level of care and skill ordinarily exercised by other professional Consultants practicing in the same locale and under similar circumstances at the time the Services are performed. No other representation and no warranty or guarantee, express or implied, is included or intended by this Agreement or any report, opinion, document, or other instrument of service.

4.2. Level of Service. Consultant offers different levels of professional consulting services to suit the desires and needs of different clients. Although risk associated with site acquisition or development can never be eliminated, more detailed and extensive investigations yield more information. It is for these reasons that Client must determine the level of Services adequate for its purposes. Client has reviewed the PROPOSAL and has determined that it does not need or want a greater level of Services than that specifically identified in the PROPOSAL.

4.3. No Warranty. Client recognizes the inherent risks connected with property transactions and site development, and understands when signing that those risks are not entirely eliminated through the services of Consultant. Client recognizes that opinions relating to geologic or environmental conditions, including those associated with air, soil and groundwater, are based on limited data and that actual surface and subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made. Client also recognizes that site conditions may change with time, conditions may vary from those encountered at the times when and locations where the data are obtained, despite the use of due professional care. Therefore, in signing this Agreement the Client understands that Consultant is not providing a warranty or assurance as to the conditions throughout the site. This Agreement neither makes nor intends a warranty or guarantee, express or implied, of any type nor does it create a fiduciary responsibility to Client by Consultant.

5. CLIENT'S RESPONSIBILITIES

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

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

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

5.3. Rights of Entry. Provide access to and/or obtain permission for Consultant to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. Consultant will operate with reasonable care to minimize damage to the Project Site(s) and any improvement located thereon. However, Client recognizes that Consultant's operations and the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). The cost of repairing such damage will be borne by Client and is not included in the fee unless otherwise stated in the PROPOSAL. If client desires or requires Consultant to restore the site to its former condition, upon written request Consultant will perform such additional work as is necessary and Client agrees to pay to Consultant the cost thereof.

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

5.5. Project Information. Client agrees to provide Consultant within 5 days after written request, a correct statement of the recorded legal title to the property on which the Project is located and the Client and/or Owner's interest therein.

5.6. Notification to Third Party Site Owner. In the event the project site is not owned by Client, Client agrees that it is the Client's responsibility to inform the property owner of the discovery of hazardous materials.

6. CHANGED CONDITIONS

If Consultant discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), Consultant will notify Client in writing of the Changed Conditions. Client and Consultant agree that they will then renegotiate in good faith the terms and conditions of this Agreement. If Consultant and Client cannot agree upon amended terms and conditions within 30 days after notice, Consultant may terminate this Agreement and be compensated as set forth in Section 14, "Termination."

7. ESTIMATE OF REMEDIATION COSTS

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

8. ALLOCATION OF RISK

8.1. Limitation of Liability. The total cumulative liability of Consultant, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "Consultant Entities"), to Client and its successors, all parties included as additional insured on Consultant's insurance policies, those parties granted report reliance rights by Consultant, and all of their respective shareholders, directors, officers, employees and agents (collectively "Client Entities") arising from or relating to Services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by Consultant under this Agreement or one million dollars (\$1,000,000.00), whichever is greater; provided, however, that such liability is further limited as described below. This limit is an aggregate limit with respect to all services on the project, whether provided under this, prior or subsequent agreements, unless modified in writing, agreed to and signed by authorized representatives of the parties. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in Consultant's Services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written request, Consultant and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in Consultant's fee, provided that they amend this Agreement in writing as provided in Section 16. Consultant Entities and Client Entities also agree that the Client Entities will not seek damages in excess of the limitations indirectly through suits with other parties who may join Consultant as a third-party defendant.

8.2. Indemnification. Client will indemnify, defend and hold harmless Consultant, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "Consultant Entities") from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and costs of defense) or other losses (collectively "Losses") to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Consultant's negligence, Client waives any claim against Consultant, and to the maximum extent permitted by law, expressly agrees to defend, indemnify and hold harmless Consultant Entities from and against any and all Losses, arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

8.3. Consequential Damages. Neither Client nor Consultant will be liable to the other for any special, consequential, incidental or penal losses or damages of whatever nature including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, loss of profits, loss of revenue, or loss of inventory, or for use charges, cost of capital, or claims of the other party and/or its customers, which may arise directly or indirectly as a result of the Services provided by Consultant under this Agreement.

8.4. Continuing Agreement. The provisions of this Section 8, "Allocation of Risk," will survive the expiration or termination of this Agreement. If Company provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the provisions of this Section 8 will apply to such Services as if the parties had executed an amendment.

8.5. No Personal Liability. Client and Consultant intend that Consultant's Services will not subject Consultant's individual employees, officers or directors to any personal liability. Therefore, and notwithstanding any other provision of this Agreement, Client agrees as its sole and exclusive remedy to direct or assert any claim, demand or suit only against the business entity identified as "Consultant" on the first page of this Agreement.

9. INSURANCE

9.1. Consultant's Insurance. Consultant carries Statutory Workers' Compensation and Employer's Liability Insurance; Commercial General Liability Insurance for bodily injury and property damage; Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles; and Professional Liability Insurance. Certificates of insurance can be furnished upon written request but may not be processed unless accompanied by a signed Agreement. Client agrees not to withhold payment to Consultant for Client's failure to make such a timely request and such requests may not be honored if made after final completion of authorized Services. Additional charges may apply for Waiver of Subrogation and Additional Insured Endorsements. Consultant assumes the risk of damage caused by Consultant's personnel to Consultant's supplies and equipment.

9.2. Certificates of Insurance. Upon request, Consultant and Client will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Certificates of insurance can be furnished upon written request but may not be processed unless accompanied or preceded by a signed Agreement. Client agrees not to withhold payment to Consultant for Client's failure to make such a timely request and such requests may not be honored if made after final completion of authorized Services. Additional charges may apply for Waivers of Subrogation and Additional Insured Endorsements.

10. OWNERSHIP AND USE OF DOCUMENTS

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

10.2. Consultant's Documents. Unless otherwise agreed in writing, all documents and information prepared by Consultant or obtained by Consultant from any third party in connection with the performance of Services, including, but not limited to, Consultant's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively "Documents") are instruments of professional service, not products, and are the property of Consultant. Consultant has the right, in its sole discretion, to dispose of or retain the Documents. Consultant reserves the right to copyright such documents; however, such copyright is not intended to limit the Client's use of the services provided under this Agreement other than as described below.

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

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

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

10.4. Electronic Media. Consultant may agree at Client's request to provide Documents and information in an electronic format. Client recognizes that Documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration due to (among other causes) transmission, conversion, media degradation, software error, or human alteration. Accordingly, all Documents and information provided by Consultant

in electronic media are for informational purposes only and not as final documentation; the paper original issued by Consultant will remain the final documentation of the Services.

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

11. RELATIONSHIP OF THE PARTIES

Consultant will perform Services under this Agreement as an independent contractor.

12. ASSIGNMENT AND SUBCONTRACTS

During the term of this Agreement and following its expiration or termination for any reason, neither party may assign this Agreement or any right or claim under it, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Any assignment that fails to comply with this paragraph will be void and of no effect. Consultant may subcontract for the services of others without obtaining Client's consent if Consultant deems it necessary or desirable for others to perform certain Services.

13. SUSPENSION AND DELAYS

13.1. Procedures. Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by Consultant. Consultant may terminate this Agreement if Client suspends Consultant's Services for more than 60 days and Client will pay Consultant as set forth under Section 14, "Termination." If Client suspends Consultant's Services, or if Client or others delay Consultant's Services, Client and Consultant agree to equitably adjust: (1) the time for completion of the Services; and (2) Consultant's compensation in accordance with Consultant's then current Fee Schedule for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by Consultant for demobilization and subsequent remobilization.

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

14. TERMINATION

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

14.2. Termination for Cause. In the event of material breach of this Agreement, the non-breaching party may terminate this Agreement if the breaching party fails to cure the breach within 5 days following delivery of the non-breaching party's written notice of the breach to the breaching party. The termination notice must state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 5-day period.

14.3. Payment on Termination. Following termination other than for Consultant's material breach of this Agreement, Client will pay Consultant for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with Consultant's then current Fee Schedule.

15. DISPUTES

15.1. Mediation. All disputes between Consultant and Client, except those involving Client's failure to pay undisputed invoices as provided herein, are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice. The mediation shall be administered by the American Arbitration Association or by such other person or organization as the parties may agree upon, in accordance with the rules of the American Arbitration Association.

15.2. Precondition to Other Action. No action or suit, except those involving Client's failure to pay undisputed invoices as provided herein, may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice. If the matter is referred to arbitration, the arbitration shall be conducted in Fresno County, California. The arbitrator shall be appointed within 60 days of the arbitrators' receipt of a written request to arbitrate the dispute. The arbitrator shall be authorized to provide all recognizable remedies available in law or equity for any cause of action that is the basis of the arbitration (to the extent such remedy is not otherwise precluded under this Agreement), provided that (i) the arbitrator shall not have the authority to award punitive damages, and (ii) each party shall bear its own costs and attorney's fees related to the arbitration.

15.3. Choice of Law; Venue. This Agreement will be construed in accordance with and governed by the laws of the State of California. Except for actions, such as for enforcement of mechanic's liens, which are required by statute to be brought in a specific venue, or unless the parties agree otherwise, any mediation or other legal proceeding will occur in Fresno County, California. Client waives the right to have the suit brought, or tried in, or removed to, any other county or judicial jurisdiction. The prevailing party will be entitled to recovery of all reasonable costs incurred, including court costs, reasonable attorney's fees, and other claim related direct expenses.

15.4. Statutes of Limitations. Any applicable statute of limitations will be deemed to commence running on the earlier of the date of substantial completion of Consultant's Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

16. MISCELLANEOUS

16.1. Integration and Severability. This Agreement reflects the entire agreement of the parties with respect to its terms and conditions, and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

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

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

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

16.5. **Waiver.** The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

16.6. **Survival.** These terms and conditions survive the completion of the Services and/or the termination of this Agreement, whether for cause or for convenience.

16.7. **Warranty Of Authority To Sign, Personal Guarantee.** The person signing this contract warrants that he/she has authority to sign on the behalf of the Client for whose benefit Consultant's services are rendered. If such person does not have such authority, he/she agrees that he/she is personally liable for obligations under this Agreement and all breaches of this contract and that in any action against him/her for breach of such warranty, reasonable attorney's fees shall be included in any judgment rendered. Further, if Client fails to perform and is in breach of this Agreement the person signing this Agreement agrees that he/she is personally liable for obligations under this Agreement and all breaches of this contract and that in any action against him/her for breach of such warranty, reasonable attorney's fees shall be included in any judgment rendered.

16.8. **Precedence.** These Terms and Conditions take precedence over any inconsistent or contradictory provisions contained in any other agreement term, proposal, purchase order, requisition, notice to proceed, or other document regarding Consultant's Services.

16.9. **Incorporation of Provisions Required By Law.** Each provision and clause required by law to be inserted in this Agreement is included herein, and the Agreement should be read and enforced as though each were set forth in its entirety herein.

17. HAZARDOUS MATERIALS RISKS

Client recognizes that Consultant's failure to detect the presence of hazardous materials at a site, even though Consultant performed its services in accordance with the Standard of Care, does not guarantee that hazardous materials do not exist at the site. Client recognizes that the state of practice, particularly with respect to contaminated site and materials conditions, is changing and evolving. While Consultant is required to perform in reasonable accordance with the standards in effect at the time the services are performed, it is recognized that those standards may subsequently change because of improvements in the state of practice. Client agrees to waive any claim against Consultant and agrees to defend, indemnify, and hold Consultant harmless from claims or liability for injury or loss arising from Consultant's failure to detect the presence of hazardous materials through techniques commonly employed for the purpose.

18. ENTIRE AGREEMENT

This Agreement between the parties consists of these Terms and Conditions, the PROPOSAL by the Consultant, and any exhibits or attachments noted in the PROPOSAL. Together, these elements will constitute the entire Agreement superseding any and all prior negotiations, correspondence, or agreements either written or oral. The Parties have read the foregoing, understand completely the terms, and willingly enter into this Agreement. This Agreement was developed to be fair and reasonable to both parties. The terms of this Agreement will prevail over any different or additional terms in Client's purchase order or other forms provided by Client to Consultant as part of the authorization process unless agreed in writing by Consultant. The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to be bound accordingly. Consultant's acceptance of this Agreement is pending credit review and a retainer fee may be required.

19. OPTIONAL SERVICE - ENVIRONMENTAL LIEN SEARCH

Please clearly indicate below whether you accept or decline the Environmental Lien Search option for additional fee as specified in the attached PROPOSAL by initialing your selection:

_____ Consultant is hereby authorized to conduct Environmental Lien Search(es) by engagement of a title professional as an addition to the scope of services described herein.

_____ Client hereby waives, and specifically directs Consultant to exclude, the performance of Environmental Lien Search(es).

Client: FRESNO COUNTY RURAL TRANSIT AGENCY

Consultant: KRAZAN & ASSOCIATES, INC.

Signature Date

Signature Date

Name (Please Print)

Arthur C. Farkas, REA
Name (Please Print)

Title

Env. Division Manager
Title