



November 11, 2019
Project No. P1874.01.01

Nicholas Green
City of John Day
450 East Main Street
John Day, Oregon 97845

Re: Iron Triangle Property, 433 Patterson Bridge Road, John Day, Oregon: proposal for environmental site assessments

Dear Mr. Green:

Maul Foster & Alongi, Inc. (MFA) appreciates the opportunity to present this proposal to conduct environmental site assessments (ESAs) including a Phase I ESA and a hazardous building material survey for the above-referenced property.

In part, the Phase I ESA will form the basis for assessing the value of attaining a Prospective Purchaser Agreement (PPA) with the State of Oregon, limiting the City's potential environmental liabilities in the event the property is acquired. If a PPA is desired by the City, MFA will support those efforts as described below.

BACKGROUND

The site consists of a logging business and log yard with associated support buildings. The property is listed on the Oregon Department of Environmental Quality's (DEQ's) environmental cleanup site information (ESCI) database as site identification number 4755. The DEQ ESCI database indicates that above ground storage tanks have been present at the property since 1994.

SCOPE OF WORK

Task 1—Phase I ESA

MFA will conduct a Phase I ESA at the above-referenced property. The scope of work is designed to meet the ASTM International Standard Practice E1527-13 for conducting a Phase I ESA, and the "all appropriate inquiries" (AAI) standard under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in 40 CFR Part 312. The Phase I ESA will be directed by an environmental scientist with relevant education and experience in performing Phase I ESAs. MFA has developed this scope of work for the Phase I ESA to provide the necessary information regarding the potential for impacts to site environmental media, permitting the user to satisfy one of the requirements to qualify for the

bona fide prospective purchaser, innocent landowner, and/or contiguous property owner limitations on CERCLA liabilities.

The purpose of the Phase I ESA is to identify evidence of “recognized environmental conditions” (RECs). ASTM E1527-13 defines RECs as the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property, or into the ground, groundwater, or surface water of the property. The term includes hazardous substances or petroleum products used even under conditions in compliance with the laws. The term is not intended to include de minimis conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

MFA will conduct AAI regarding the potential for RECs at the property. AAI means an appropriate level of assessment, balancing time and cost demands with an adequate reduction in uncertainty regarding unknown conditions as consistent with CERCLA §101(35)(B)(iii).

The scope of work for the Phase I ESA specifically excludes evaluation of the following issues: radon, lead in drinking water, wetlands, regulatory compliance, cultural and historic resources, industrial hygiene, health and safety, ecological resources, endangered species, indoor air quality, biological agents, toxic fungus, mold, and high-voltage power lines.

No environmental assessment can wholly eliminate uncertainty regarding the potential for RECs in connection with a property. A Phase I ESA is intended to reduce, but not eliminate, uncertainty regarding the potential for RECs in connection with a property.

Review Regulatory Agency Records

MFA will retain a subcontractor to search publicly available state and federal environmental databases within the ASTM-specified distances.

MFA assumes spending up to two (2) hours reviewing environmental records and/or reports provided by the client. This proposal includes completion of a regulatory file request for the property and/or adjacent properties if identified in the standard environmental databases. MFA will review regulatory files received electronically before the conclusion of the agreed-on timeframe for this scope of work.

Historical Land Use

MFA will review available sources of historical land use information to develop a chronology of the property’s development and operational history. MFA’s scope of work and cost estimate do not include reviewing the history of adjoining properties.

MFA will use standard sources of historical information to identify prior uses of the property. MFA will consult one or more of the following standard historical sources:

- Aerial photographs
- Fire insurance maps
- Property tax files
- Recorded land title records (if provided by client)
- U.S. Geological Survey 7.5-minute topographic map
- Local street directories
- Building department records
- Zoning/land use records
- Fire marshal records
- Previous prior usage assessments
- Other historical sources

Site Reconnaissance

A site reconnaissance will be conducted to obtain information that may suggest evidence of RECs in connection with the property. MFA will need authorization to access the site. During the site visit, MFA will observe the uses and conditions of the property, consistent with ASTM E1527-13, to the extent that they can be visually or physically observed.

The periphery and interior of the property will be visually observed, as well as the periphery of all structures on the property (if applicable). The accessible areas inside structures will be observed; MFA will not look under floors, above ceilings, or behind walls. The property and adjoining properties will also be viewed from adjacent public thoroughfares.

Interviews

For purposes of this Phase I ESA, MFA will attempt to interview current and past property owners and operators. MFA may also attempt to contact current and/or past owners and operators of adjacent properties that may have environmental issues. The objective of the interviews is to obtain information indicating RECs in connection with the property.

The interviews may be by telephone, in person, or in writing. The questions asked during the interview will attempt to obtain information about uses and conditions of the property and to identify the presence of RECs, as well as to evaluate the potential for contamination. MFA will attempt to schedule the interviews to coincide with the site reconnaissance, if appropriate.

MFA will also make a reasonable attempt to interview at least one government official by telephone concerning the property. The official will be from one of the following agencies:

- Local or state agencies having jurisdiction over hazardous-waste disposal or hazardous-substance releases
- Local fire department that serves the property
- Local health department or state department of health

Phase I ESA Report Preparation

MFA will prepare a signed Phase I ESA report that generally follows the format recommended in ASTM E1527-13 and will provide it electronically. The Phase I ESA report will identify the environmental professional(s) involved in conducting the assessment and will include a statement of each professional's qualifications as an attachment. Hard copies and/or CD copies of the report can be provided, if requested, but will result in additional charges not included in MFA's estimated budget.

Task 2—Hazardous Building Material Survey

MFA will provide an accredited building inspector, consistent with the Asbestos Hazard Emergency Response Act to collect bulk building material samples in compliance with the Toxic Substance Control Act Title II/40 Code of Federal Regulations (CFR) 763. This survey will be completed on permanent structures at the property. Based on air photos this proposal assumes up to five buildings will be assessed.

Task 2a—Hazardous Building Material Assessment

MFA will collect samples of building materials suspected to be asbestos-containing materials (ACM). MFA will assess painted surfaces in buildings at the site with a portable x-ray fluorescence (XRF) device to understand the presence of lead-based paint (LBP).

Additionally, MFA will collect up to 5% of samples analyzed with the portable XRF and submit them to an analytical testing laboratory for quality assurance. The time needed to collect the samples is assumed to be 2 working days on site.

Potential ACM and LBP samples will be collected using industry-standard techniques. Samples will be tracked under standard chain of custody procedures. Samples will be collected from the buildings identified during the Phase I ESA and by the City of John Day to support a property transaction. MFA assumes non-destructive sampling will be conducted as part of this survey. Based on this type of sampling, some building materials identified as being potential ACM or LBP may not be able to be sampled.

Task 2b—Analytical Work and Quality Assurance/Quality Control

ACM samples will be submitted to a testing laboratory compliant with the National Voluntary Laboratory Accreditation Program per 40 CFR 763 Subpart F, Appendix A for polarized light microscopy analysis by U.S. Environmental Protection Agency (USEPA) Method 600/R-93-116. LBP samples will be analyzed by USEPA Method 3050B/7420. Samples will be submitted on a normal turnaround time basis. Typical laboratory turnaround times are two weeks.

Task 2c—Hazardous Building Materials Reporting

MFA will prepare a brief letter report describing field sampling procedures and summarizing the laboratory results. The report will include information pertaining to the location of samples collected and amount and quality of building materials reported to contain more than 1% asbestos (if encountered) and/or detectable concentrations of lead.

The report will be provided electronically via email in Adobe portable document format. This report may be used to communicate abatement needs to a licensed abatement contractor.

Task 3—Prospective Purchaser Agreement Support

In the event the Phase I ESA results indicate a PPA is warranted, and the City chooses to attain one, MFA will support those efforts as follows:

- Participate in the pre-application meeting and initial scoping session with the City and DEQ
- Develop the detailed scope of work defining the remedial action and limits of City obligations. This document becomes an element of the PPA Consent Judgment
- Provide technical support to the City's legal counsel in attaining the PPA Consent Judgment.

COST ESTIMATE

The estimated cost to perform the proposed work is \$37,577. The cost estimate will not be exceeded without prior authorization.

SCHEDULE

MFA will initiate the scope of work described herein upon receiving your authorization to proceed. The Phase I ESA report and hazardous building materials report will be provided to you within six weeks from authorization to proceed, assuming prompt access to the site, the property owner, and occupants for site reconnaissance and interviews. This proposal is valid for 90 days.

Please be advised that, according to ASTM E1527-13, you, as the user, are requested to provide MFA with the information requested in the attached Client/User Questionnaire, as available.

After you have reviewed this submittal, please indicate your approval of the proposal by signing below. Please also complete and sign the Client/User Questionnaire, return these documents to us (scanned files are acceptable), and retain a copy for your records.

We appreciate the opportunity to submit this proposal and look forward to talking with you soon.

Sincerely,

Maul Foster & Alongi, Inc.



Seth Otto, AICP, LEED AP
Senior Planner



Ted Wall, PE
Vice President/Principal Engineer

Attachments: Estimated Budget
Client/User Questionnaire
Schedule of Charges
General Terms and Conditions

The above proposal, including all attachments, has been read and understood and is hereby agreed to and accepted. It is agreed that the attached "Schedule of Charges," "General Terms and Conditions" (which contains a limitation of liability provision), and Addendum(s), if any, form an express part of the Contract, as evidenced by my signature below:

City of John Day, Oregon

By _____ Date _____

Name _____ Title _____
(please print)

**ESTIMATED BUDGET
CITY OF JOHN DAY
IRON TRIANGLE PROPERTY ASSESSMENT**

Task	Maul Foster & Alongi, Inc.			Subcontractors	Total
	Hours	Labor	Direct		
1 Phase I Environmental Site Assessment	35	\$5,160	\$60	\$460	\$5,680
2a Complete Hazardous Building Materials Assessment	44	\$6,520	\$1,913	\$40	\$8,473
2b Analytical Work and QA/QC	6	\$830	\$60	\$604	\$1,494
2c Hazardous Building Materials Reporting	14	\$1,890	\$40	\$0	\$1,930
3 Prospective Purchaser Agreement Support	125	\$20,000	\$0	\$0	\$20,000
Total Estimated Cost					\$37,577

CLIENT/USER QUESTIONNAIRE

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 “**User**” (defined as the party requesting the Phase I Environmental Site Assessment [ESA]) 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. This Client/User Questionnaire is to be completed by the **User**. Typically the **User** is **NOT** the current property owner. It is acceptable to write “Do not know” or “Not that I am aware of.”

Property Address: _____

Name of User Completing Form: _____

Relationship to Property: _____

1. Environmental cleanup liens that are filed or recorded against the site (40 CFR 312.25).

Are you aware of any environmental cleanup liens against the property that are filed or recorded under federal, tribal, state, or local law? _____

2. Activity and land use limitations that are in place on the site or that have been filed or recorded in a registry (40 CFR 312.26).

Are you aware of any Activity Use Limitations (AULs), such as engineering controls, land use restrictions, or institutional controls, that are in place at the site and/or have been filed or recorded in a registry under federal, tribal, state, or local law? _____

3. Specialized knowledge or experience of the person seeking to qualify for the LLP (40 CFR 312.28).

As the User of this ESA, do you have any specialized knowledge or experience related to the property or nearby properties? For example, are you involved in the same line of business as the current or former occupants of the property or an adjoining property and therefore you would have specialized knowledge of the chemicals and processes used by this type of business?

4. Relationship of the purchase price to the fair market value of the property if the property were not contaminated (40 CFR 312.29).

Does the purchase price being paid for this property reasonably reflect the fair market value of the property? Yes No

If you conclude that **there is a difference**, have you considered whether the lower purchase price is because contamination is known or believed to be present at the property?

5. Commonly known or reasonably ascertainable information about the property (40 CFR 312.30).

Are you aware of commonly known or reasonably ascertainable information about the property that would help the environmental professional to identify conditions indicative of releases or threatened releases? For example, as User,

(a) Do you know the past uses of the property? Yes No (summarize below if yes)

(b) Do you know of specific chemicals (including petroleum products) that are present or once were present at the property? Yes No (summarize below if yes)

(c) Do you know of spills or other chemical releases that have taken place at the property? Yes No (summarize below if yes)

(d) Do you know of any environmental cleanups that have taken place at the property? Yes No (summarize below if yes)

(e) Do you have any other environmentally significant information? _____

6. 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 (40 CFR 312.31).

As the User of this ESA, based on your knowledge and experience related to the property, are there any obvious indicators that point to the presence or likely presence of contamination at the property?

Prior to the site visit, the User must respond to the following questions:

Is there any pending, threatened, or past litigation relevant to hazardous substances or petroleum products in, on, or from the property? _____

Are there any pending, threatened, or past administrative proceedings relevant to hazardous substances or petroleum products in, on, or from the property? _____

Are there any notices from any government agency regarding any possible violation of environmental laws or possible liability relating to hazardous substances or petroleum products? _____

Additional Information

In addition, certain information should be collected, if available, and provided to the environmental professional selected to conduct the Phase I ESA. This information is intended to assist the environmental professional but is not necessarily required in order to qualify for one of the LLPs. The information includes:

(a) The reason why the Phase I ESA is required _____

(b) The type of property and type of property transaction; for example, sale, purchase, or exchange

(c) The complete and correct address for the property (a map or other documentation showing property location and boundaries, tax lot numbers, and parcel size is helpful) _____

(d) The scope of services desired for the Phase I ESA (including whether any parties to the property transaction may have a required standard scope of services or whether any considerations beyond the requirements of ASTM Practice E 1527-13 are to be considered) _____

(e) Identification of all parties who will rely on the Phase I ESA report _____

(f) Identification of the site contact and current owner and how these contacts can be reached _____

(g) Any special terms and conditions that must be agreed to by the environmental professional _____

(h) Any other knowledge or experience with the property that may be pertinent to the environmental professional (for example, copies of any available prior ESA reports, documents, or correspondence concerning the property and its environmental condition) _____

Signature

Printed Name

Title

Company Name

Date

Please provide copies of the following documents (if available) as described in ASTM E 1527-13 Section 10.8.1:

1. ESA reports
2. Environment compliance audit reports
3. Environmental permits (for example, solid waste disposal permits, hazardous waste disposal permits, wastewater permits, NPDES permits, underground injection permits)
4. Registrations for underground and aboveground storage tanks
5. Registrations for underground injection systems
6. Material safety data sheets (a list is adequate)
7. Community right-to-know plan
8. Safety plans; preparedness and prevention plans; spill prevention, control, and countermeasure plans, etc.
9. Reports regarding hydrogeologic conditions on the property or in the surrounding area
10. Notices or other correspondence from any government agency relating to past or current violations of environmental laws with respect to the property or relating to environmental liens encumbering the property
11. Hazardous waste generator notices or reports
12. Geotechnical studies
13. Risk assessments
14. Recorded AULs
15. Title records



SCHEDULE OF CHARGES

PERSONNEL CHARGES

Principal	\$170 – 250/hour
Senior	\$130 – 190/hour
Project	\$120 – 160/hour
Staff	\$100 – 130/hour
GIS and Data Analyst/Technician	\$100 – 135/hour
CADD Operator	\$80 – 95/hour
Administrative Assistant/Copy Editor	\$80 – 90/hour

Depositions and expert witness testimony, including preparation time, will be charged at 200 percent of the above rates.

Travel time will be charged in accordance with the above rates.

OUTSIDE SERVICES

Charges for outside services, equipment, and facilities not furnished directly by Maul Foster & Alongi, Inc. will be billed at cost plus 10 percent. Such charges may include, but shall not be limited to the following:

Printing and photographic reproduction	Rented equipment
Rented vehicles	Shipping charges
Transportation on public carriers	Meals and lodging
Special fees, permits, insurance, etc.	Consumable materials

SUBCONTRACTORS

Charges for subcontractors will be billed at cost plus 15 percent.

DIRECT CHARGES

Vehicle per mile\$0.75

COMPUTER CHARGES

CADD, ArcGIS, Tableau, Alteryx.....\$20.00/hour
EQuIS, EVS, Modeling Applications.....\$30.00/hour

FIELD EQUIPMENT

The rates for field equipment are set forth in the Field Equipment Rate Schedule.

DOCUMENT PRODUCTION

The rates for document production are set forth in the Document Production Rate Schedule.

RATE CHANGES

Schedule of Charges and Standard Equipment Rates are subject to change without notice.

BILLING AND PAYMENT

Invoices will be submitted monthly and shall be due and payable upon receipt. Interest at the rate of one and one-half percent (1.5%) per month, but not exceeding the maximum rate allowable by law, shall be payable on any amounts that are due but unpaid within thirty (30) days from receipt of invoice, payment to be applied first to accrued late payment charges and then to the principal unpaid amount.



GENERAL TERMS AND CONDITIONS

ARTICLE 1—PROFESSIONAL RESPONSIBILITY

MFA shall perform the Services specified in this Agreement consistent with the level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the same time the Services are performed; subject, however, to any express limitations established by the CLIENT as to the degree of care and amount of time and expense to be incurred and any other limitations contained in this Agreement. No other representation, warranty or guaranty, express or implied, is included in or intended by this Agreement or any other of MFA's services, proposals, agreements or reports contemplated by this Agreement.

ARTICLE 2—INDEPENDENT CONTRACTOR STATUS; LEGAL RELATIONSHIP

The parties intend that MFA, in performing Services specified in this Agreement, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. MFA shall be free to contract for similar services to be performed for other individuals or entities while it is under contract with CLIENT.

The parties further intend that nothing in this Agreement shall be construed or interpreted as requiring MFA to assume the status of an owner, operator, generator, person who arranges for disposal, transporter or storer, as those terms, or any other similar terms, are used in any federal, state or local statute, regulation, order or ordinance governing the treatment, storage, handling and disposal of any toxic or hazardous substance or waste.

ARTICLE 3—BILLING AND PAYMENT

Invoices will be submitted monthly and shall be due and payable upon receipt. Payment shall be made to Maul Foster & Alongi, Inc. and delivered to:

Maul Foster & Alongi, Inc.
109 East 13th Street
Vancouver, WA 98660

Interest at the rate of one and one-half percent (1.5%) per month, but not exceeding the maximum rate allowable by law, shall be payable on any amounts that are due but unpaid within thirty (30) days from receipt of invoice, payment to be applied first to accrued late payment charges and then to the principal unpaid amount. MFA may, at its option, withhold delivery of reports and any other data pending receipt of payment for services rendered. Remittance will be mailed to MFA at the address noted on such invoices or as MFA may otherwise advise.

ARTICLE 4—LIMITATION OF LIABILITY

CLIENT agrees to limit the liability of MFA, its officers, directors, shareholders, employees, agents and representatives (the "MFA Parties") to CLIENT for all claims and legal proceedings of any type arising out of or relating to the performance of Services under this Agreement (including, but not limited to, MFA's breach of the Agreement, its professional negligence, errors and omissions and other acts) to the greater of \$100,000 or the amount of MFA's Fee. Failure of CLIENT to give written notice to MFA of any claim of negligent act, error or omission within one (1) year of performance shall constitute a waiver of such claim by CLIENT. In no event shall MFA be liable for any direct, special or consequential loss or damages. MFA is solely responsible for performance of this contract, and no affiliated company, director, officer, employee, or agent shall have any legal responsibility hereunder, whether in contract or tort, including negligence.

ARTICLE 5—INDEMNIFICATION

Subject to the limitation of liability above, MFA shall indemnify, defend and hold CLIENT harmless from the proportionate share of any claim, suit, liability, damage, injury, cost or expense, including attorneys fees, or other loss (hereafter collectively called "Loss") arising out of (a) MFA Parties' breach of this Agreement or (b) MFA Parties' willful misconduct or negligence in connection with the performance of the Services under this Agreement.

CLIENT agrees to indemnify, defend and hold harmless MFA Parties from any Loss arising out of (a) CLIENT's breach of the Agreement, or (b) CLIENT's willful misconduct or negligence in connection with performance of the Agreement. To the extent such Loss is caused by MFA's negligence, CLIENT shall indemnify, defend, and hold MFA harmless from the proportional share of the Loss resulting from the acts or negligence of others.

ARTICLE 6—TERM OF AGREEMENT; TERMINATION

The obligations of the parties to indemnify and the limitations on liability set forth in this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 7—TIME OF PERFORMANCE/FORCE MAJEURE

MFA makes no warranties regarding the time of completion of Services, and shall not be in default of performance under this Agreement where such performance is prevented, suspended or delayed by any cause beyond MFA's control.

Neither party will hold the other responsible for damages for delays in performance caused by acts of God or other events beyond the control of the other party and which could not have been reasonably foreseen or prevented. If such events occur, it is agreed that both parties will use their best efforts to overcome all difficulties arising and to resume as soon as reasonably possible performance of Services under this Agreement. Delays within the scope of this provision will extend the contract completion date for specified services commensurately or will, at the option of either party, make this Agreement subject to termination or to renegotiation.

ARTICLE 8—SUSPENSION OF SERVICES

CLIENT may suspend further performances of Services by MFA by ten (10) days prior written notice. If payment of invoices by CLIENT is not maintained on a thirty (30) day current basis, MFA may suspend further performance until such payment is restored to a current basis. Suspensions for any reason exceeding thirty (30) days will, at the option of MFA, make this Agreement subject to termination or renegotiation.

All suspensions will extend the contract completion date for specified services commensurately, and MFA will be paid for services performed to the suspension date plus suspension charges. Suspension charges are defined as those charges relating to costs incurred which are directly attributable to suspension of services, including, but not limited to, personnel rescheduling, equipment rescheduling, and/or reassignment adjustments.

ARTICLE 9—CHANGED CONDITIONS

If, during the course of the performance of the Services under this Agreement, conditions or circumstances develop or are discovered which were not contemplated by MFA at the commencement of this Agreement, and which materially affect MFA's ability to perform the Services or which would materially increase the costs to MFA of performing the Services, then MFA shall notify the CLIENT in writing of the newly discovered conditions or circumstances, and CLIENT and MFA shall renegotiate in good faith the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after the mailing of such notice, MFA may terminate the Agreement and be compensated as set forth in the section of this Agreement entitled TERM OF AGREEMENT; TERMINATION.

ARTICLE 10—INSURANCE

MFA agrees to use its best efforts to maintain Professional Liability, Commercial General Liability, Automobile Liability, statutory Worker's Compensation and Employers' Liability insurance coverage during the period of performance of services hereunder in the following minimum amounts:

	<u>LIMITS OF LIABILITY</u>
A. Worker's Compensation Employer's Liability	Statutory \$1,000,000
B. Commercial General Liability (including Contractual Liability) Bodily Injury Property Damage	\$1,000,000 combined single limits for each occurrence or aggregate

LIMITS OF LIABILITY

- | | | |
|----|--|--|
| C. | Comprehensive Automobile Liability
(Owned, Hired, and Non-owned Vehicles)
Bodily Injury
Property Damage | \$1,000,000 combined single limits for each
occurrence or aggregate |
| D. | Professional Liability: | \$1,000,000 combined single limits for each
occurrence or aggregate |

At CLIENT's request, insurance certificates will be provided by MFA to evidence such coverages.

ARTICLE 11—HAZARDOUS OR UNSAFE CONDITIONS

CLIENT has fully informed MFA of the type, quantity, and location of any hazardous, toxic, or dangerous materials or unsafe or unhealthy conditions which CLIENT knows or has reason to suspect exists at all real property where the Services are to be performed (the "Project Site"). CLIENT shall immediately inform MFA when it becomes aware of any new information as to the foregoing which may affect the project, such as information to constitute a CHANGED CONDITION subject to the provisions of Article 9 of this Agreement.

MFA shall not be responsible for the health and safety of any persons other than the MFA Parties, nor shall have any responsibility for the operations, procedures or practices of persons or entities other than the MFA Parties.

ARTICLE 12—RIGHT OF ENTRY AND UNAVOIDABLE DAMAGES

Client agrees to grant or arrange for right of entry when deemed necessary by MFA to perform the Services at the Project Site, whether or not the Project Site is owned by CLIENT. CLIENT recognizes that the use of investigative equipment and practices may unavoidably alter conditions or affect the environment at the Project Site. While MFA will take all reasonable precautions to minimize damage to the Project Site, the cost of repairing any such damage shall be borne by CLIENT, and it is understood that the correction of such damage is not part of the Services or the Fee contemplated by this Agreement.

ARTICLE 13—SUBCONTRACTORS

MFA may, in its sole discretion, subcontract for the services of others without obtaining CLIENT's consent where MFA deems it necessary or desirable to have others perform certain services. If MFA, in its sole discretion, deems it necessary or desirable to obtain Client's advance concurrence as to any proposed subcontract, MFA may make a written request to CLIENT to review the qualifications and suggested scope of work to be performed by such proposed subcontractor and CLIENT shall either grant or deny such concurrence within a reasonable time after receipt of such request.

ARTICLE 14—OWNERSHIP AND REUSE OF DOCUMENTS

All documents furnished by MFA pursuant to this Agreement are instruments of MFA's services. MFA may retain an ownership and property interest therein, and MFA shall, in its sole discretion, have the right to dispose of or retain all such documents. Such documents are not intended or represented to be suitable for reuse by CLIENT or others. Any such reuse without specific written verification and adaptation by MFA for the specific purpose intended will be at the reuser's sole risk and without liability or legal exposure to MFA. Any transfer of electronic data hereunder is solely for Client's convenience "as is" without warranty as to contents, and is not the project deliverable unless specifically agreed to the contrary. MFA disclaims all warranties express or implied with regard to any electronic data provided hereunder, including any warranties of merchantability or fitness for a particular purpose.

ARTICLE 15—NO THIRD PARTY BENEFICIARIES

There are no third party beneficiaries of this Agreement, and no third party shall be entitled to rely upon any work performed or reports prepared by MFA hereunder for any purpose whatsoever. CLIENT shall indemnify and hold MFA harmless against any liability to any third party for any Loss arising out of or relating to the reliance by any such third party on any work performed or reports issued by MFA hereunder.

ARTICLE 16—DESIGNS AND DISCOVERIES

In the course of providing Services to CLIENT, MFA may utilize or develop designs, ideas, discoveries, inventions, or improvements of these (collectively "Ideas"), made by the MFA Parties. CLIENT agrees that MFA's utilization or development

of such Ideas does not grant CLIENT any right in the form or ownership or license to such Ideas. All Ideas utilized or developed while providing CLIENT Services shall be deemed to be property of MFA.

ARTICLE 17—LAWS AND REGULATIONS

Both parties will be entitled to regard all applicable laws, rules, regulations and orders issued by any federal, state, regional or local regulatory body as valid and may act in accordance therewith until such time as the same may be modified or superseded by such regulatory body or invalidated by final judgment in a court of competent jurisdiction, unless prior to such final judicial determination, the effectiveness of such law, rule or regulation has been stayed by an appropriate judicial or administrative body having jurisdiction.

In the event there are changes in existing laws, codes, regulations, orders or ordinances, or the interpretation thereof, following the performance of professional services, CLIENT agrees to defend, indemnify and hold MFA harmless from any and all claims, including claims for fines or penalties imposed, resulting from or alleged to have resulted from noncompliance with or nonincorporation of such changes in professional services prior to the effectiveness of such changes.

ARTICLE 18—ASSIGNMENT

Neither party to this Agreement may delegate, assign, or otherwise transfer its rights and interests or duties and obligations under this Agreement without prior written consent of the other party.

ARTICLE 19—ATTORNEYS' FEES AND COSTS

If any action or proceeding is commenced to enforce or interpret any of the terms or conditions of this Agreement or the performance thereof, including the collection of any payments due hereunder, the prevailing party will be entitled to recover all reasonable attorneys' fees, costs and expenses, including staff time at current billing rates, court costs, and other claim-related expenses.

If MFA is requested to respond to any mandatory orders for the production of documents or witnesses on CLIENT's behalf regarding work performed by MFA, CLIENT agrees to pay all costs and expenses incurred by MFA not reimbursed by others in responding to such order, including attorney's fees, staff time at current billing rates and reproduction expenses.

ARTICLE 20—GOVERNING LAW

This Agreement shall be subject to, interpreted and enforced according to the laws of the State from which MFA's services are procured.

ARTICLE 21—SEVERABILITY

Any provision of this Agreement held in violation of any law will be deemed stricken and all remaining provisions shall continue valid and binding upon the parties. The parties will attempt in good faith to replace any invalid or unenforceable provision(s) of this Agreement with provisions which are valid and enforceable and which come as close as possible to expressing the intention of the original provisions.

ARTICLE 22—ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between CLIENT and MFA. It supersedes any and all prior written or oral agreements, negotiations, or proposals, or contemporaneous communications with respect to the subject matter hereof, and has not been induced by any representations, statements, or agreements other than those herein expressed. No amendment to this Agreement hereafter made between the parties will be binding on either party unless reduced to writing and signed by authorized representatives of both parties.