



May 19, 2016

Mr. Jay Fang  
CALIFORNIA INVESTMENT REGIONAL CENTER LLC  
1585 Kapiolani Boulevard, Suite 1215  
Honolulu, Hawaii 96814

Proposal No. 1709.16.096 (Rev. 2)

Subject: Proposal to Conduct an Updated Phase I Environmental Site Assessment of the Three Commercial Properties Located at 1362, 1370 and 1374 Kapiolani Boulevard (Tax Map Key Numbers [TMKs]: [1] 2-3-016: Parcels 018, 019, and 020), in Honolulu, Oahu, Hawaii

Dear Mr. Fang:

Bureau Veritas North America, Inc. (Bureau Veritas) is pleased to present this proposal to conduct an updated Phase I Environmental Site Assessment (ESA) of the three commercial properties located at 1362, 1370 and 1374 Kapiolani Boulevard (Tax Map Key Numbers [TMKs]: [1] 2-3-016: Parcels 018, 019, and 020), in Honolulu, Oahu, Hawaii (the "subject property").

Bureau Veritas understands that the three contiguous properties to be assessed are described as follows:

1. 1362 Kapiolani Boulevard, Honolulu, Hawaii  
TMK: (1) 2-3-016: Parcel 020  
15,000 square-foot parcel improved with a two-story commercial building containing approximately 8,994 square feet, built in 1947
2. 1370 Kapiolani Boulevard, Honolulu, Hawaii  
TMK: (1) 2-3-016: Parcel 019  
15,000 square-foot parcel improved with a two-story commercial building containing approximately 8,368 square feet, built in 1947
3. 1374 Kapiolani Boulevard, Honolulu, Hawaii  
TMK: (1) 2-3-016: Parcel 018  
15,000 square-foot parcel improved with a two-story commercial building containing approximately 8,182 square feet, built in 1962

We also understand that California Investment Regional Center LLC will use Bureau Veritas' report to assess environmental conditions and potential environmental liabilities, if any, associated with the subject property. Furthermore, Bureau Veritas understands that you will arrange site access, and that you will provide a site contact.

### **SCOPE OF WORK**

Bureau Veritas will use ASTM International (ASTM) Standard Practice E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* as a guideline. ASTM Practice E1527-13 constitutes "all appropriate inquiry (AAI)" into the previous ownership and uses



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of a property consistent with good commercial or customary practice” as defined at 42 United States Code (U.S.C) §9601(35)(B). This practice also permits the user to satisfy one of the requirements to qualify for “landowner liability protections (LLPs)” under Comprehensive Environmental Response, Compensation (CERCLA).

In addition to describing tasks to be performed by Bureau Veritas, Practice E1527-13 also describes tasks that are the responsibility of the *user*, defined as the party seeking to use E1527-13 to complete an ESA. The tasks to be performed by Bureau Veritas and the tasks to be performed by the user are described in the following sections.

The Phase I ESA will be conducted to provide an independent, professional opinion regarding recognized environmental conditions, as defined by ASTM, associated with the subject property. The term recognized environmental conditions means 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. In particular, Bureau Veritas will perform the following for the subject property:

- Attempt to interview the subject property owner, current lessee, current lessee’s operations personnel, key site personnel, and others, regarding current and previous uses of the property, particularly activities involving hazardous substances and petroleum products.
- Investigate historical use of the subject property through reasonably ascertainable historical information such as aerial photographs, fire insurance maps, land use maps, city directories, and/or agency records for evidence of prior land use that could have led to recognized environmental conditions.
- Review available information on general geology and topography of the subject property, local groundwater conditions, sources of water, power, and sewer, and proximity to ecologically sensitive receptors, such as streams, that might be impacted by recognized environmental conditions and environmental issues.
- Review environmental records available from the property owner, current lessee, or site contact including regulatory agency reports, permits, registrations, and consultants’ reports for evidence of recognized environmental conditions and activity and use limitations (AULs).
- Conduct an onsite reconnaissance of the subject property for visual evidence of recognized environmental conditions, including:
  - Existing or potential soil and water contamination, as evidenced by soil or pavement staining or discoloration, stressed vegetation, or indications of waste dumping or burial
  - Pits, ponds, or lagoons
  - Containers of hazardous substances or petroleum products
  - Electrical and hydraulic equipment that may contain polychlorinated biphenyls (PCBs), such as electrical transformers and hydraulic hoists



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-- Underground and aboveground storage tanks (USTs and ASTs, respectively)

During the site walkthrough, if Bureau Veritas' access to structures or areas is limited or safety concerns prohibit entry, or if direct observation of the site is restricted, such as by dense vegetation, Bureau Veritas will make an effort to contact you for further direction.

- Perform a site property line visual assessment of adjacent properties for evidence of potential offsite environmental conditions that may affect the subject property.
- Review a commercial database summary of federal and state and tribal regulatory agency records pertinent to the subject property and offsite facilities located within ASTM-specified search distances from the subject property.
- As part of the Phase I ESA, conduct Vapor Encroachment Screening to assess the potential for chemical and petroleum hydrocarbon vapor impacts to the subject property from onsite and offsite sources, in accordance with the ASTM E2600-10.
- Assess the structures on the subject property for evidence of suspect asbestos-containing materials (ACM) and lead-based paint (LBP). No sampling or analysis of suspect ACM and/or paints will be conducted.
- Prepare a written report, including our findings and conclusions, and if warranted, recommendations for additional investigation.

The scope of work for the Phase I ESA does not include any sampling and/or analysis of suspect ACM, paints, soil, groundwater, or other materials. Activities performed by Bureau Veritas under this scope of work will be conducted under the responsible charge of an *Environmental Professional* as defined in 40 Code of Federal Regulations (CFR) §312.10.

### **User's Responsibilities**

Section 6. *User's Responsibilities*, of ASTM Practice E1527-13 describes specific tasks to be performed by the user of the Phase I ESA, which include the development of information to be provided to Bureau Veritas. As a convenience, we have summarized these requirements in the questionnaire contained in Attachment 1. This questionnaire should be completed and returned to Bureau Veritas at the same time this proposal is authorized. Incomplete or missing information could be considered a *data gap* and could result in a determination that AAI is not complete.

As an option and on your behalf, Bureau Veritas can obtain and review the required "Title and Judicial Records for Environmental Liens or Activity and Use Limitations" (title/lien search report) for an additional fee. The user may provide this information in the form of a recent (less than six months old) title report for the subject property.

### **SCHEDULE**

Bureau Veritas will be pleased to begin this project upon receipt of your written authorization to proceed. We will deliver a PDF-formatted copy of the Phase I ESA report to you, via email, within 15 working days after completion of the field work. If you require hard copies of the final report, Bureau Veritas will be pleased to provide these upon your request.



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### **FEES**

Bureau Veritas will provide the services outlined in the proposed scope of work for a fixed fee of **\$5,500.00**, which includes Hawaii State tax.

OPTION: Bureau Veritas can obtain and review the required Title and Judicial Records for Environmental Liens or Activity and Use Limitations (title report) for an additional fee of **\$900.00** (\$300.00 per parcel), plus GET.

### **MISCELLANEOUS**

The scope of work outlines activities that Bureau Veritas will conduct during this project. Completion of the scope of work within the schedule and for the fees noted above, Bureau Veritas assumes the following:

- Bureau Veritas will review up to 500 total pages of reports, records, case files, etc. for the subject property.
- Bureau Veritas will review environmentally related documents provided you or your representatives make them available to us within five days of project commencement.
- Bureau Veritas understands that you or your representatives will provide, as needed during the project, access to the subject property and to persons knowledgeable of property operations and history.

If you are aware of other addresses historically associated with the subject property, please provide them to Bureau Veritas within five days of commencement of this project. If other addresses are found during the completion of the Phase I ESA that were not provided to Bureau Veritas, then a revision in the fee for this project may be necessary.

Any unexpected conditions or concerns that become apparent during the project, such as deviation from the assumptions outlined herein, may require a revision in the project scope, schedule, and fees. Bureau Veritas will notify you of any necessary change in project scope and fees, and obtain written confirmation of such changes. If Bureau Veritas' work is encumbered or stopped by your actions, such as failure to arrange property access, California Investment Regional Center LLC will be charged additional fees according to our fee schedule. Should additional environmental work be performed, you will be billed on a time and materials basis according to our fee schedule.

### **TERMS AND CONDITIONS**

Bureau Veritas will provide the services described in the scope of work using commercially reasonable best efforts consistent with the level and skill ordinarily exercised by members of the profession currently practicing under similar conditions. Attached is a copy of our standard Terms and Conditions dated July 1, 2014, which are incorporated in this proposal as if set forth herein in full. This proposal is valid for 60 days from the date issued.

For your convenience, this proposal is presented in a form that can be accepted as an agreement. To accept this proposal, please sign on the following page and return it to our office. This page can be e-mailed to me at [tim.swartz@us.bureauveritas.com](mailto:tim.swartz@us.bureauveritas.com), or faxed to us at (808) 537-4084.



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If you are requesting that Bureau Veritas obtain the Environmental Liens/AULs records (title report), please check "Yes" in the authorization block of the final page of this document. By checking "No", you acknowledge that the user will supply the title report to Bureau Veritas.

We look forward to working with you on this project. If you have any questions, please contact us at (808) 531-6708.

Sincerely,

Tim Swartz  
Senior Project Manager  
Health, Safety, and Environmental Services

John P. Rau, P.G.  
Senior Geologist/Manager  
Health, Safety, and Environmental Services

TS/JPR/lf

Attachments: 1 – Phase I User Questionnaire  
2 – Terms and Conditions

Authorization for Bureau Veritas to obtain and review Title and Judicial Records for additional fee of **\$900.00** (\$300.00 per parcel), plus tax

YES \_\_\_\_\_

NO \_\_\_\_\_

X

Proposal with Attached Terms and Conditions Accepted By (Signature): \_\_\_\_\_

Print Name: \_\_\_\_\_

Jay Fang  
Manager

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

Company: \_\_\_\_\_

California Investment Regional Center LLC

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

5/20/2016



**ATTACHMENT 1**

**PHASE I USER QUESTIONNAIRE**



**ASTM PRACTICE E 1527-13 USER/CLIENT QUESTIONNAIRE**  
**To be returned to Bureau Veritas with the authorized proposal**

**GENERAL INFORMATION**

User/Client Name(s):	California Investment Regional Center LLC
Property Name and Address (Include known current and former address[es] and parcel no.):	TMK: 2-3-016:018 2-3-016:019 2-3-016:020
Property Acreage:	45,000 sq
Current Property Type (Designate property type and list current tenants [business name and type of operation]):	Residential: __ Commercial: <input checked="" type="checkbox"/> Industrial: __ Other: __
Type of Property Transaction with respect to User (Designate one):	Purchase: <input checked="" type="checkbox"/> Lease: __ Other (provide further information): __
Reason Phase I is Required (Check all that apply):	Landowner Liability Protections (e.g. Innocent Landowner Defense): __ Evaluation of Business Risk: <input checked="" type="checkbox"/> Other (list): __  (Note: If no reason is given it is assumed that this assessment is being performed to satisfy one of the requirements for Landowner Liability Protections to CERCLA liability.)
Site Owner/ Contact(s) (Name and phone number):	Sheldon K. Galusso (Agent) 808-441-0531

Please provide the above information as well as a site plan (ALTA Survey, if available) which clearly designates the boundaries of the subject property for purposes of this Phase I ESA. A list of other Helpful documents is included with the proposal.



## ASTM PRACTICE E 1527-13 USER/CLIENT QUESTIONNAIRE (Continued)

Providing the following information (if available) to the *environmental professional* (Bureau Veritas) is one of the requirements to qualify for one of the *Landowner Liability Protections (LLPs)* offered under CERCLA. Missing or incomplete information could result in a determination that "*all appropriate inquiry*" is not complete. If further information is desired regarding these issues, Bureau Veritas recommends you consult with an Environmental Attorney.

### REQUIRED INFORMATION

The citation at the end of each item (e.g., 40 CFR 312.XX) is the section of EPA's November 1, 2005 AAI Final Rule which discusses that item. The ASTM Standard requires that reasonably ascertainable recorded land title records that are filed under federal, tribal, state and local law should be reviewed to determine the presence of Environmental Liens and Activity and Use Limitations (AULs) that are currently recorded against the property. This should also include a review of Environmental Liens and AULs that are imposed by judicial authorities and recorded/filed in judicial records. The Standard recommends that the User retain a title company or title professional to undertake a review of recorded land title records. Furthermore, the User is to provide any actual knowledge on Environmental Liens and AULs, as well as other selected information regarding *recognized environmental conditions*, to the *environmental professional*.

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

Given the above requirement, are you aware of any environmental cleanup liens against the property that are filed or recorded under federal, tribal, state or local law? (Check One)

No:

Yes (If "Yes" provide further information): \_\_\_

(Note: If you desire that Bureau Veritas retain a title company/title professional on your behalf to review reasonably ascertainable recorded land title records for the presence of environmental cleanup liens and AULs currently recorded against the property please designate such on the Proposal Acceptance Agreement)

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

Given the above requirement, are you aware of any 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? (Check One)

No:

Yes (If "Yes" provide further information): \_\_\_





**ASTM PRACTICE E 1527-13 USER/CLIENT QUESTIONNAIRE  
(Continued)**

**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* so that you would have specialized knowledge of the chemicals and processes used by this type of business? (Check One)

No:

Yes (If "Yes" provide further information): \_\_\_

**4. Relationship of the purchase price to the fair market value of the *property* if it 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*? 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*?

Yes:

No (If "No" provide further information): \_\_\_

Not Applicable (e.g., transaction is a lease): \_\_\_

**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?

No:

Yes (If "Yes" provide further information): \_\_\_

For example, as *user*,

(a.) Do you know the past uses of the *property*?

No: \_\_\_

Yes (If "Yes" provide further information): \_\_\_



**ASTM PRACTICE E 1527-13 USER/CLIENT QUESTIONNAIRE  
(Continued)**

(b.) Do you know of specific chemicals that are present or once were present at the *property*?

No:

Yes (If "Yes" provide further information): \_\_\_

(c.) Do you know of spills or other chemical releases that have taken place at the *property*?

No:

Yes (If "Yes" provide further information): \_\_\_

(d.) Do you know of any environmental cleanups that have taken place at the *property*?

No:

Yes (If "Yes" provide further 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*?

No:

Yes (If "Yes" provide further information): \_\_\_

**7. Proceedings involving the *property* (ASTM E 1527-05 § 10.9).**

Are you aware of any of the following:

(a.) Any pending, threatened, or past litigation relevant to hazardous substances or petroleum products in, on, or from the *property*?

No:

Yes (If "Yes" provide further information): \_\_\_



**ASTM PRACTICE E 1527-13 USER/CLIENT QUESTIONNAIRE  
(Continued)**

- (a.) Any pending, threatened, or past administrative proceedings relevant to hazardous substances or petroleum products in, on, or from the property?

No:

Yes (If "Yes" provide further information): \_\_\_

- (b.) Any notices from any governmental entity regarding any possible violation of environmental laws or possible liability relating to hazardous substances or petroleum products?

No:

Yes (If "Yes" provide further information): \_\_\_

**SIGNATURE**

It is understood that the information presented in this form is an integral part of the Phase I ESA process and that Bureau Veritas will evaluate and rely on this information in the development of the final Phase I ESA report.

Questionnaire Prepared

By:

Print/Type Name:

Zhe Fan

Title:

Manager

Company:

California Investment Regional Center LLC

Date:

5/19/2016



**ATTACHMENT 2**  
**TERMS AND CONDITIONS**

## BUREAU VERITAS NORTH AMERICA, INC.'S CONSULTING AGREEMENT

This Agreement is made and entered into by and between the client ("Client") and Bureau Veritas North America, Inc., hereinafter ("BVNA").

These Terms and Conditions govern the work to be performed by Bureau Veritas North America, Inc. ("BVNA"), as specified in the proposal prepared by BVNA of which these Terms and Conditions are a part thereof.

### RECITALS

WHEREAS, BVNA is trained, experienced and competent to perform the services which will be required by this Agreement;

WHEREAS, BVNA is willing to render the professional services described herein on the following terms and conditions;

WHEREAS, All services will be conducted in accordance with the proposal and these attached terms and conditions.

NOW, THEREFORE, the parties agree as follows:

### AGREEMENT

- 1. Initiation of Services:** To initiate services, please complete and return the attached "Proposal Acceptance Agreement" form. All parties agree that any services performed by BVNA prior to the Client executing the attached "Proposal Acceptance Agreement" form are governed by these referenced terms and conditions. No subsequent amendment to this Agreement shall be binding on either BVNA or Client unless reduced to writing and signed by an authorized Representative of BVNA and Client. Any pre-printed forms including, but not limited to: purchase orders, shipping instructions, or sales acknowledgment forms of either party containing terms or conditions at variance with or in addition to those set forth herein shall not in any event be deemed to modify or vary the terms of this Consulting Agreement.
- 2. Scope of Services:** BVNA shall provide its services at the time, place, and in the manner specified in the proposal.
- 3. Time of Performance:** The services of BVNA are to commence upon execution of this Agreement and shall continue until all authorized work is completed. BVNA shall use commercially reasonable best efforts in performing services under these Terms and Conditions, and the Companion Documents ("Agreement"). Companion Documents shall mean any documents accompanying BVNA's Proposal, including but not limited to the Scope of Work, Fee Schedules or any other Exhibits specific to the project. BVNA shall not be responsible for failure to perform its services if i) there is a failure or delay by Client or its contractors in providing BVNA with the necessary access to properties, documentation, information, or materials; ii) Client or its contractors fail to approve or disapprove BVNA's work; or iii) if Client causes delays in any way whatsoever. In any of these events, BVNA's time for completion of its service shall be extended accordingly. BVNA shall not be responsible for failure to perform if such failure is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure or interruption, or any other cause reasonably beyond BVNA's control. In any of these events, BVNA's time for completion of its services shall be extended accordingly.
- 4. Safety Responsibilities:** If BVNA provides a safety and health officer at the Site where the work is to be done, BVNA will advise Client regarding deficiencies with respect to specifications and applicable regulations. BVNA is not responsible for the failure of Client or its agents to follow the recommendations of BVNA's personnel. Where BVNA provides a safety and health officer it shall be authorized to take measures on behalf of Client that, in BVNA's opinion, will maintain generally accepted health and safety standards for personnel at the Site.
- 5. Site Conditions:** It is understood and agreed that (i) BVNA is not, and has no responsibility as an owner, handler, generator, operator, treater, storer, arranger, transporter or disposer of hazardous or toxic substances found or identified at the Site; and (ii) Client shall undertake to arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the Site. Client understands and acknowledges that (i) Client may be requesting BVNA to undertake services or work for the benefit of Client involving the presence or potential presence of hazardous substances; and (ii) BVNA may be exposed to claims arising out of, or involving actual, alleged, or threatened discharge, disposal or release or escape of hazardous or potentially hazardous pollutants including, but not limited to, solid, liquid, gaseous or thermal irritants or contaminants including smoke, water, vapor, soot, fumes, acids, alkalis, chemicals, wastes, and waste materials, and Client understands and agrees that BVNA shall only be responsible for losses which directly result from BVNA's negligence. Client will grant to, or obtain for, BVNA unimpeded access to the Project site for all equipment and personnel necessary for the performance of the Services, and (if requested by BVNA) necessary for BVNA's personnel to photograph the Project site. As required to effectuate such access, Client will notify all owners, lessees, contractors, subcontractors, and other possessors of the Project site that BVNA must be allowed free access to the site. While BVNA agrees to take reasonable precautions to minimize damage to the site, Client understands that, in the normal course of performing the Services, some damage may occur, and further understands that BVNA is not responsible for the correction of any such damage unless so specified in the Proposal. Client is responsible for the accuracy of locations for all subterranean structures and utilities. BVNA will take reasonable precautions to avoid known subterranean structures and utilities, and Client waives any claim against BVNA, and agrees to defend, indemnify, and hold BVNA harmless from any claim or liability for injury or loss of any party, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate BVNA for any time spent or expenses incurred by BVNA in defense of any such claim with compensation to be based upon BVNA's prevailing fee schedule and expense reimbursement policy.
- 6. Contamination:** Client acknowledges that it is impossible for BVNA to know the exact composition of a site's subsurface, even after conducting a comprehensive exploratory program. As a result, there is a risk that drilling and sampling may result in contamination of certain subsurface areas. Although BVNA will take reasonable precautions to avoid such an occurrence, Client waives any claim against, and agrees to defend, indemnify and save BVNA harmless from any claim or liability for injury or loss which may arise as a result of subsurface contamination caused by drilling, sampling, or monitoring well installation. Client also agrees to adequately compensate BVNA for any time spent and expenses incurred in defense of any such claim.
- 7. Sample Disposal:** Unless other arrangements are made, BVNA will dispose of all soil and rock samples remaining at the time of report completion. Further storage or transfer of samples can be arranged at Client's prior written request, subject to a reasonable charge by BVNA. Client acknowledges that contaminated drill cuttings, sample spoils, wash water, and other materials may be produced as a result of encountering hazardous materials at the site. In HSE One Off T&C's [Rev.(7) 7.1.2014]

such event, BVNA shall properly contain, label, and store such materials on-site, and Client shall be responsible for its proper transportation and disposal. BVNA may be able to arrange for the transportation and disposal of hazardous materials at Client's request.

**8. Construction Monitoring:** If BVNA is engaged by Client to provide a site representative for the purpose of monitoring specific portions of any construction work, as set forth in the proposal, then this Section 8 shall apply. If BVNA's engagement does not include such construction monitoring, then this Section shall be null and void. In connection with construction monitoring, BVNA will report observations and professional opinions to Client. BVNA shall report to Client any observed work which, in BVNA's opinion, does not conform to plans and specifications. BVNA shall have no authority to reject or terminate the work of any agent or contractor of Client. No action, statements, or communications of BVNA, or BVNA's site representative, can be construed as modifying any agreement between Client and others. BVNA's presence on the Project site in no way guarantees the completion or quality of the performance of the work of any party retained by Client to provide construction related services. Neither the professional activities of BVNA, nor the presence of BVNA or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon BVNA any responsibility for methods of work performance, superintendence, sequencing of construction, or safety conditions at the Project site. Client acknowledges that Client or its general contractor is solely responsible for job site safety, and warrants and agrees that such responsibility shall be made evident in any Project owner's agreement with the general contractor. Client also agrees to make BVNA an additional insured under any general contractor's General Liability insurance policy. Prior to the commencement of the Work, Client shall provide BVNA with a certificate of insurance evidencing the required insurance. Such certificates shall be issued by an insurance carrier(s) acceptable to BVNA and shall be endorsed to include: (1) BVNA as additional insured; (2) thirty (30) days prior written notice of cancellation or material change in any of the coverages; and (3) a waiver of subrogation as to BVNA. Each policy of insurance required shall be written by an insurance company with a minimum rating by A.M. Bests & Company of A-VI. This insurance shall be primary to any insurance available to BVNA. In the event BVNA expressly assumes any health and safety responsibilities for hazardous materials or other items specified in this Agreement, the acceptance of such responsibility does not and shall not be deemed an acceptance of responsibility for any other health and safety requirements, such as, but not limited to, those relating to excavation, trenching, drilling or backfilling.

**9. Compensation:** Compensation to be paid to BVNA shall be in accordance with the Schedule of Fees set forth in the proposal. A charge of 7.85% of the monthly invoice representing charges for BVNA personnel will be billed to defray costs associated with office, computer and electronic communications.

**10. Method of Payment:** BVNA shall submit monthly billings to Client describing the work performed during the preceding month. Client shall pay BVNA no later than thirty (30) days after receipt of the monthly invoice by Client's staff. For proposals with a value of less than \$5,000, an invoice for the proposal value will be issued immediately upon acceptance of the proposal. This invoice will require a 50% payment prior to the start of work with the remaining balance due immediately upon completion of work by BVNA. If the invoice is not paid within such period, Client shall be liable to BVNA for a late charge accruing from the date of such invoice to the date of payment at the lower of eighteen (18) percent per annum or the maximum rate allowed by law. Further, if the invoice is not paid within such period, BVNA may, at any time, and without waiving any other rights or claims against Client and without thereby incurring any liability to Client, elect to terminate performance of services immediately following written notice from BVNA to Client. Notwithstanding any such termination of services, Client shall pay BVNA for all services rendered by BVNA up to the date of termination of services plus all interest, termination costs and expenses incurred by BVNA. Client shall reimburse BVNA for all costs and expenses of collection, including reasonable attorney's fees.

**11. Ownership of Documents:** All plans, studies, documents and other writings prepared by BVNA, its officers, employees and agents and subcontractors in the course of implementing this Agreement shall remain the property of BVNA. The Client acknowledges that all intellectual property rights related to the performance of the Agreement, including but not limited to the names, service marks, trademarks, inventions, logos and copyrights of BVNA and its affiliates, (collectively, the "Rights") are and shall remain the sole property of BVNA or its affiliates and shall not be used by the Client, except solely to the extent that the Client obtains the prior written approval of BVNA and then only in the manner prescribed by BVNA. If BVNA terminates the Agreement in accordance with the provisions of Article 34 below, any such license granted by BVNA to the Client shall automatically terminate.

**12. Use of Data or Services:** BVNA shall not be responsible for any loss, liability, damage, expense or cost arising from any use of BVNA's analyses, reports, certifications, advice or reliance upon BVNA's services, which is contrary to, or inconsistent with, or beyond the provisions and purposes set forth therein or included in these Terms and Conditions, or in the Companion Documents. Client understands and agrees that BVNA's analyses, reports, certifications and services shall be used solely by the Client, and only Client is allowed to rely on such work product. If a third party relies on the services, analyses, reports or certifications without BVNA's written permission, then Client agrees to defend and indemnify BVNA from any claims or actions that are brought as a result of such reliance.

**13. Independent Contractor:** It is understood that BVNA, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Client. BVNA shall obtain no rights to retirement benefits or other benefits which accrue to Client's employees, and BVNA hereby expressly waives any claim it may have to any such rights.

**14. Standard of Care:** BVNA REPRESENTS THAT THE SERVICES, FINDINGS, RECOMMENDATIONS AND/OR ADVICE PROVIDED TO CLIENT WILL BE PREPARED, PERFORMED, AND RENDERED IN ACCORDANCE WITH PROCEDURES, PROTOCOLS AND PRACTICES ORDINARILY EXERCISED BY PROFESSIONALS IN BVNA'S PROFESSION FOR USE IN SIMILAR ASSIGNMENTS, AND PREPARED UNDER SIMILAR CONDITIONS AT THE SAME TIME AND LOCALITY. CLIENT ACKNOWLEDGES AND AGREES THAT BVNA HAS MADE NO OTHER IMPLIED OR EXPRESSED REPRESENTATION, WARRANTY OR CONDITION WITH RESPECT TO THE SERVICES, FINDINGS, RECOMMENDATIONS OR ADVICE TO BE PROVIDED BY BVNA PURSUANT TO THIS AGREEMENT.

**15. Indemnity:** Subject to the Limitation of Liability included in this Agreement, BVNA shall indemnify and hold harmless Client from and against losses, liabilities, and reasonable costs and expenses (for property damage and bodily injury, including reasonable attorney's fees), to the extent directly and proximately arising from BVNA's negligent performance of services or material breach under this Agreement. BVNA shall not be obligated to defend the Client until there is an actual finding of negligence or if the parties agree otherwise. Client shall defend, indemnify and hold harmless BVNA, its employees, directors, officers, and agents, from and against claims, losses, liabilities, and reasonable costs and expenses (including reasonable attorney's fees) that are: i) related to, or caused by the negligence or willful misconduct of Client, its employees, or agents; ii) related to this Agreement or the work to be performed by BVNA for which BVNA is not expressly responsible; or iii) the expressed responsibility of the Client under this Agreement.

16. **Limitation of Liability:** To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the total aggregate liability of BVNA, its affiliates, employees, officers, directors and agents (Collectively referred to in this paragraph as "BVNA") for all claims for negligent professional acts, errors or omissions arising out of this Agreement is limited to \$50,000 or the amount of the total fees hereunder, whichever is greater.

17. **Insurance:** BVNA, at BVNA's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies with insurers possessing a Best's rating of no less than A:VII:

- a. **Workers' Compensation Coverage:** BVNA shall maintain Workers' Compensation and Employer's Liability Insurance for its employees in accordance with the laws of the state where the services are being performed. Any notice of cancellation or non-renewal of all Workers' Compensation policies will be sent to the Client in accordance with the policy provisions.
- b. **General Liability Coverage:** BVNA shall maintain Commercial General Liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- c. **Automobile Liability Coverage:** BVNA shall maintain Automobile Liability insurance covering bodily injury and property damage for activities of BVNA employee arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- d. **Professional Liability Coverage:** BVNA shall maintain Professional Errors and Omissions Liability for protection against claims alleging negligent acts, errors or omissions which may arise from BVNA's services under this Agreement. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis.

BVNA shall name Client as additional insured and other parties that it deems appropriate to be additionally insured under BVNA's Commercial General Liability policy and Automobile Liability policy, if requested to do so by Client. The Client, on its own behalf and on the behalf of any others that are named as additionally insured at Client's request, agrees that providing such insurance or the additional insured endorsement shall in no way be construed as an assumption by BVNA of any liability for the negligence or willful misconduct or any wrongful behavior on the part of Client or others that are named additionally insured.

18. **Consequential and Punitive Damages:** Neither BVNA nor Client shall be liable under any circumstances for loss of profits, loss of product, consequential damages of any kind, indirect damages of any kind or special damages of any kind to the other party, or to any third party. No punitive or exemplary damages of any kind shall be recoverable against either party under any circumstances.

19. **Cause of Action:** If Client makes a claim against BVNA, for any alleged error, omission, or other act arising out of the performance of its professional services and to the extent the Client fails to prove such claim, then the Client shall pay all costs including attorney's fees incurred by BVNA in defending the claim. Any cause of action brought against BVNA shall be brought within one (1) year of the work or services performed under this Agreement.

20. **Compliance with Laws:** BVNA shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinance and regulations in effect as of the date services are provided.

21. **Resolution of Disputes:** All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, except those disputes which arise out of or are related to collection matters or fees alone under this Agreement, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and BVNA shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and BVNA within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree.

Should either party to this Agreement commence any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorney's fees.

22. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state where the BVNA office originating the work or proposal is located.

23. **Releases:** All lien releases will be limited to payment issues; no additional terms and conditions may be added to a release of lien.

24. **Waiver of Jury Trial:** Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

25. **Third Party Beneficiary:** It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Client and BVNA. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the Client and BVNA that any such person or entity, other than Client or BVNA, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

26. **Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth in the proposal. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

27. **Confidential Information:** Neither party shall disclose information identified as confidential to anyone except those individuals who need such information to perform the Services; nor should either party use such confidential information, except in connection with the Work, the performance of the Services or as authorized by the other party in writing. Regardless of the term of this Agreement, each party shall be bound by this obligation until such time as the confidential information shall become part of the public domain. Confidential information shall not include information which is either: (i) known to the public; (ii) was known to the receiving party prior to its disclosure; or (iii) received in good faith from a third party. If either party is required to produce information by valid subpoena or Court order, parties agree to first provide prompt notice to other party in order to allow the party to seek a protective order or other appropriate remedy. This shall not prevent either party from disclosing information to the extent reasonably necessary to substantiate a claim or defense in any adjudicatory proceeding. Client agrees that BVNA shall be permitted to use Client's name and logos in BVNA's marketing materials unless advised or prohibited against it by the Client in writing. The technical and pricing information contained in any proposal or other documents submitted to Client by BVNA is to be considered confidential and proprietary and shall not be released or disclosed to a third party without BVNA's written consent.

28. **Assignment:** Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement. Any attempted assignment, which requires consent hereunder, shall be void and shall constitute a material breach of this Agreement if such consent is not obtained.

29. **Non-Solicitation / Hiring of Employees:**

(a) To promote an optimum working relationship, the Client agrees in good faith that for the term of this Agreement and one year after the completion or termination of the Agreement not to directly or indirectly employ or otherwise engage any current employee of BVNA or any former employee of BVNA who left the employ of BVNA within the six (6) months prior to and including the date of the execution of the Agreement. The loss of any such employee would involve considerable financial loss of an amount that could not be readily established by BVNA. Therefore, in the event that Client should breach this provision and without limiting any other remedy that may be available to BVNA, the Client shall pay to BVNA a sum equal to the employee's current annual salary plus twelve (12) additional months of the employee's current annual salary for training of a new employee as liquidated damages.

(b) BVNA's employees shall not be retained as expert witnesses except by separate written agreement. Client agrees to pay BVNA's legal expenses, administrative costs and fees pursuant to BVNA's then current fee schedule for BVNA to respond to any subpoena.

30. **Prevailing Wage:** This Agreement and any proposals hereunder specifically exclude compliance with any project labor agreement or other union or apprenticeship requirements. In addition, unless explicitly agreed to in the body of the proposal, this Agreement and any proposals hereunder specifically exclude compliance with any State or Federal prevailing wage law or associated requirements, including the Davis Bacon Act. Due to the professional nature of its services BVNA is generally exempt from the Davis Bacon Act and other prevailing wage schemes. It is agreed that no applicable prevailing wage classification or wage rate has been provided to BVNA, and that all wages and cost estimates contained herein are based solely upon standard, no-prevailing wage rates. Should it later be determined by the Client or any applicable agency that in fact prevailing wage applies, then it is agreed that the contract value of this agreement shall be equitably adjusted to account for such changed circumstance. These exclusions shall survive the completion of the project and shall be merged into any subsequently executed documents between the parties, regardless of the terms of such agreement. Client will reimburse, defend, indemnify and hold harmless BVNA from any liability resulting from a subsequent determination that prevailing wage regulations cover the Projects, including all costs, fines and reasonable attorney's fees.

31. **Waiver:** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

32. **Amendments:** This Agreement may be modified or amended only by a written document executed by both BVNA and Client.

33. **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of Agreement between the Client and BVNA. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

34. **Termination:** This Agreement may be terminated immediately for cause or by either party without cause upon fifteen (15) days written notice of termination. Upon termination, BVNA shall be entitled to compensation for services performed up to the effective date of termination.

35. **Interpretation of Agreement:** This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.

36. **Severability of Agreement:** If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the laws of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be effected and shall remain in full force and effect.