



WHEREAS, the Consultant provides environmental consulting services throughout the State of Florida; and

WHEREAS, the Client requires certain environmental consulting services; and

WHEREAS, the Consultant desires to provide the Client certain environmental consulting services;

NOW, THEREFORE, in consideration of the foregoing and mutual promises of the parties, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Services. The Consultant shall conduct the services required by the client.

2. Responsibilities of the Client. The Client shall have the following responsibilities in connection with this Agreement:

(a) Provide the Consultant with full access to the Property; and

(b) Provide the Consultant with documents reasonably required by the Consultant from time to time to perform the Services (including, without limitation, legal descriptions, permits, correspondence with federal, state or local governmental agencies).

3. Term. This Agreement shall terminate on the date on which the services are completed and accepted by the Client.

4. Billing.

(a) In consideration of the Services to be performed by the Consultant hereunder, the Client shall pay to the Consultant a fee.

(I) The costs of extra tasks including but not limited to tasks such as repaving, permit fees, product disposal, contaminated soil and groundwater disposal, clean fill, etc. will

be added if and when these or other tasks may be required.

(ii) The amounts reflected in the invoices shall be payable upon receipt. All amounts remaining unpaid more than thirty (30) days after the due date shall bear interest at the rate of 1-¹/₂% per month, or eighteen percent (18%) per annum.

(b) Notwithstanding anything to the contrary contained herein, however, the Consultant hereby reserves the right to change the amount of the Fee in the event of any regulatory or statutory change that, in the sole opinion of the Consultant, causes the Fee to be impractical. The Consultant shall provide the Client with thirty (30) days' prior written notice of any such change and an explanation of the rationale therefore.

5. Limitation of Liability.

THE CONSULTANT SHALL HAVE NO LIABILITY FOR THE ACTIONS OR OMISSIONS OF ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, OFFICIALS OF ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY.

6. Representation and Warranties.

(a) The Consultant hereby represents and warrants that:

(I) The execution, delivery and performance by it of this Agreement does not violate any agreement that the Consultant may have with any other party;

(ii) It will comply with all material applicable laws and governmental rules and regulations in performing the Services hereunder; and

(iii) That it maintains professional liability insurance coverage in the aggregate amount of **\$1,000,000.00**, and general liability insurance coverage in the aggregate amount of **\$1,000,000.00**.

(b) The Client hereby represents and warrants that:

(I) The execution, delivery and performance by it of this Agreement does not violate any agreement to which it is a party;

(ii) It will comply with all material applicable laws and governmental rules and regulations in

performing its responsibilities under this Agreement;

(iii) The Client owns the Property or, it is not the owner of the Property, the Client has obtained the written agreement of the owner(s) of the Property to the effect that such owner(s) shall comply with the terms of this Agreement as if such owner(s) were named as the Client hereunder.

7. Excusable Delays in Performance.

If the Consultant's performance of any its obligations hereunder shall be delayed or prevented, in whole or in part, by any cause beyond the Consultant's reasonable control, such delay in or failure of performance shall be excused to the extent of such cause and for a reasonable period after such cause has ceased to exist. The Consultant shall use its best efforts to notify the Client of the nature of such cause, as promptly as practicable after the Consultant becomes aware of the cause for such delay.

8. Termination.

(a) The Client may terminate this Agreement prior to the Termination Date if the Consultant fails to comply with, to perform as and when required, or to observe any of the terms or conditions of this Agreement, and such failure shall have continued unremedied for a period of thirty (30) days after the Client shall have delivered written notice to the Consultant.

(b) The Consultant may terminate this Agreement prior to the Termination Date if the Client fails to make any payments required hereunder within thirty (30) days after the date when such payment is due.

(c) Upon any termination of this Agreement, the Client shall pay to the Consultant any and all compensation due and owing in connection with work performed by the Consultant prior to the effective date of said Termination.

9. Ownership of Documents.

(a) All documents, work papers, materials and other

data, other than the final product or report that is delivered to the Client by the Consultant, (collectively, the "Proprietary Information") prepared by the Consultant in connection with the Services are and shall remain the property of the Consultant. The Client may not use all or any portion of the Proprietary Information except after receipt of the prior written consent of the Consultant and for purposes specifically approved by the Consultant.

(b) Upon any termination of this Agreement, the Client shall deliver to the Consultant all Proprietary Information then in the Client's possession, if any.

10. Indemnification by the Consultant. The Consultant hereby agrees to indemnify and hold harmless the Client from and against any losses, costs, damages, or expenses (including reasonable attorneys' fees) hereafter incurred by the Client, its officers, agents or employees as a result of the gross negligence or willful misconduct of the Consultant, its officers, agents or employees.

11. Compliance with Laws. Throughout the term of this Agreement, the Consultant shall comply with any and all laws, rules, regulations and requirements of any federal agency or department and of any state, local or municipal government, agency or department which may at any time be applicable to it, including, without limitation, any federal or state laws, rules, regulations or requirements that pertain to environmental matters.

12. Prevailing Party. In the event of any litigation pertaining to the terms and provisions of this Agreement, the prevailing party shall be entitled to recover attorneys' fees from the non-prevailing party.

13. Miscellaneous.

(a) Indulgences, Etc. Neither the failure nor any delay on the part of either party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right,

remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

(b) Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitation of actions), shall be governed by an construed in accordance with the laws of the State of Florida, and without the aid of any canon, custom or rule or law requiring construction against the draftsmen.

(c) Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when personally delivered, two days following the day when deposited with an overnight courier service, such as Federal Express, for delivery to the intended addressee or two days following the day when deposited in the United States mails, first class postage prepaid, addressed as set forth below:

(I) If to the Client:

(ii) If to the Consultant:

Empire Environmental, Inc.
2411 SE Dixie Hwy.
Stuart, Florida 34996

In addition, notice by mail shall be by air mail if posted outside of the continental United States.

Any persons may alter the address to which communications or copies are to be sent by giving notice of such change of address

in conformity with the provisions of this paragraph for the giving of notice.

(d) Complete Agreement; Modifications. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing; provided, however, that in the event that there occurs a change of circumstances such that the Consultant cannot perform its obligations hereunder without modifying this Agreement, and if the Client, after receiving explanation from the Consultant of the circumstances requiring such change, refuses to execute a document agreeing to such modification, then the Consultant may terminate this Agreement without incurring any further liability hereunder.

(e) Binding Nature of Agreement; No Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, except that no party may assign or transfer its rights under this Agreement without the prior written consent of the other party hereto.

(f) Consent to Jurisdiction, Service and Venue. For the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the Client hereby irrevocably consents to the jurisdiction and venue of any of the courts of record of the State of Florida, Martin County, or the courts of the United States, Southern District of Florida. The Client hereby irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such court has been brought in an inconvenient forum and

agrees that service of process in accordance with the foregoing sentence shall be deemed in every respect effective and valid personal service of process upon the Client. The provisions of this subparagraph (f) shall not limit or otherwise affect the right of the Contractor to institute and conduct action in any other appropriate manner, jurisdiction or court.

(g) Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one (1) or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

(h) Provisions Separable. The provisions of this agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

(I) Paragraph Headings. The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

(j) Gender, Etc. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, any other gender, masculine, feminine or neuter, as context indicates is appropriate.

(k) Independent Contractor. The Consultant is an independent contractor of the Client, and the relationship hereby established between the parties does not constitute that of employer and employee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.