

Exhibit “A”

**SECOND AMENDMENT TO INTERIM REDEVELOPMENT AGREEMENT
BETWEEN TOWNSHIP OF WEST ORANGE AND THE ALPERT GROUP, LLC.**

WHEREAS, on March 7, 2017, the West Orange Township Council (the "Council") adopted Resolution 74-17 which authorized the Mayor to execute an Interim Redevelopment Agreement between the Township of West Orange (the "Township") and the Alpert Group, LLC ("Alpert" or "Interim Redeveloper"); and

WHEREAS, on March 7, 2017, the Township and Interim Redeveloper entered into the Interim Redevelopment Agreement (the "Agreement"); and

WHEREAS, on September 4, 2018, the Council adopted Resolution 192-18 which authorized the Mayor to execute a First Amendment to Interim Redevelopment Agreement between Township of West Orange and the Alpert Group, LLC (the "First Amendment"); and

WHEREAS, on September 4, 2018, the Township and Interim Redeveloper executed the Agreement to incorporate the First Amendment; and

WHEREAS, the Agreement and First Amendment remain in full force and effect; and

WHEREAS, the Agreement and First Amendment involve certain Parcels as defined in the Interim Redevelopment Agreement, including the vacant lot known as Block 7, Lot 22 (the "Selecto-Flash Vacant Lot"), and Block 9, Lot 36 (the "Selecto-Flash Building Property") (collectively the "Selecto-Flash Property"); and

WHEREAS, Section 2.05 of the Agreement, captioned "Reimbursement of Demolition Costs" provides that the Interim Redeveloper shall be entitled to reimbursement of all Demolition Costs from any subsequent designated redeveloper or any subsequent owner of the Selecto-Flash Building Property in the event that the Agreement is terminated by either Party; and

WHEREAS, Section 2.07 of the Agreement, captioned "Environmental Remediation" references the Township's ongoing efforts to remediate the Selecto-Flash Building Property, including the Township's pursuit of funding from the New Jersey Department of Environment

Protection (the "NJDEP") under the Hazardous Discharge Site Remediation Program (the "HDSRP"); and

WHEREAS, Section 2.09 of the Agreement, captioned "Redevelopment Proposal" includes a provision that provides Interim Redeveloper a right to purchase the Select-Flash Building Property; and

WHEREAS, the Township has retained and designated Matrix New World ("Matrix") as its Licensed Site Remediation Professional ("LSRP") ; and

WHEREAS, Matrix, as LSRP, is preparing a supplemental grant application with the NJDEP through the HDSRP to partially fund its proposed Remedial Action Workplan ("RAWP"); and

WHEREAS, the HDSRP provides 75% funding of costs for a municipality's RAWP and requires that the municipality fund the remaining 25% of costs for the RAWP; and

WHEREAS, the HDSRP requires affirmative confirmation that the Township will fund the remaining 25% of the costs for the RAWP; and

WHEREAS, the proposed RAWP is annexed hereto as Exhibit "A;"

WHEREAS, the Township and Interim Redeveloper agree to the terms and conditions set forth in this Second Amendment to Interim Redevelopment Agreement between Township of West Orange and the Alpert Group, LLC (the "Second Amendment"); and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, and for the benefit of the parties hereto and general public, and, further to implement the purposes of the Local Redevelopment and Housing Law and the Redevelopment Plan, the parties hereto agree as follows:

1. The parties reaffirm all terms and conditions of the Agreement and First Amendment which remain in full force and effect.

2. The Interim Redeveloper agrees to fund the remaining 25% of the RAWP ("Partial Remediation Costs") annexed hereto as Exhibit "A," conditioned upon the NJDEP's approval and grant of the HDSRP funds for 75% of the funding of costs for the RAWP.

3. The Township and Interim Redeveloper agree that Section 2.05 of the Agreement and the First Amendment shall be amended to provide that the Interim Redeveloper shall be entitled to reimbursement for the Partial Remediation Costs incurred pursuant to Paragraph 2 of this Second Amendment in addition to the Demolition Costs stated therein with the same terms and conditions applied thereto.

4. The Township and Interim Redeveloper agree that Section 2.09 of the Agreement and the First Amendment shall be amended to provide that the Interim Redeveloper shall be entitled to reduce the Purchase Price, as defined therein, by the Partial Remediation Costs incurred pursuant to Paragraph 2 of this Second Amendment.

5. This Second Amendment constitutes the entire agreement of the parties and supersedes the prior or contemporaneous writings, discussions, or agreements between the parties with respect to the subject matter hereof (except the Agreement and First Amendment, which both parties agree remain in full force and affect) and may not be further modified or further amended except by a subsequent written agreement specifically referring to this Second Amendment signed by all the parties hereto.

6. Any titles of the several Parts and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The Section headings contained in this Agreement are inserted for reference purposes only and shall be given no weight in the construction of this Agreement. None of the headings or titles of Articles and Sections are intended to limit or define the contents of the Sections and Articles.

7. This Agreement is executed in several counterparts, each of which shall constitute one and the same instrument.

8. If any provision of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey and any legal or remedial action taken hereunder shall be in the Superior Court of the State of New Jersey; Essex County.

10. **WAIVER OF JURY.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR HERewith, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

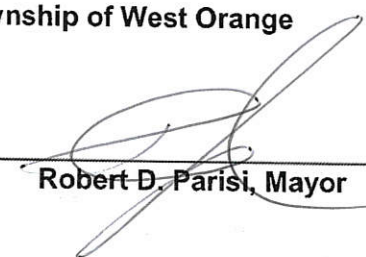
IN WITNESS WHEREOF, the Township has caused this Second Amendment to be duly executed in its name and behalf by the Mayor, and its seal to be hereunto duly affixed and attested by the Township Clerk, and the Interim Redeveloper has caused this Second Amendment to be duly executed in its name and on its behalf by its sole member, on or as of the day first above written.

ATTEST:

Township of West Orange

By: 

Karen Carnevale, Township Clerk

By: 

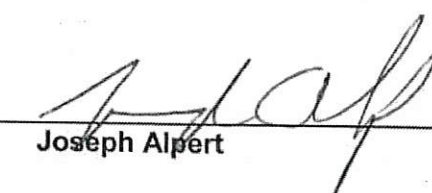
Robert D. Parisi, Mayor

ATTEST:

The Alpert Group, LLC

By: 

Fran Lacatena

By: 

Joseph Alpert

Exhibit “A”



New Jersey Department of Environmental Protection
Site Remediation Program

HDSRF APPLICATION - COST ESTIMATE - SECTION I

Activity	Rate	Unit	Quantity	Total
Task No.1 - REMEDIAL ACTION - UST REMOVAL - 18 Central Ave. (Bl. 9, Lot 36)				
Task No. 1A - UST Removal Contractor				
UST Removal	\$7,475.00	per day	2	\$14,950.00
Liquid removal/disposal	\$1.05	gallon	120	\$126.00
Non-Haz. petroleum Soil disposal	\$60.00	ton	100	\$6,000.00
Soil Approval (Material Characterization Report)	\$175.00	approval	1	\$175.00
Machine for soil load out	\$2,127.00	day	1	\$2,127.00
Vac Truck	\$115.00	hour	2	\$230.00
Certified Clean Backfill material	\$41.00	ton	180	\$7,380.00
Task No. 1A- UST Removal Costs				\$30,988.00
Task No. 1B - Analysis (Lab Service)				
EPH Cat 2- soil	\$160.00	per sample	13	\$2,080.00
PAHs - soil contingent	\$135.00	per sample	5	\$675.00
Waste Class - TCL/TAL, EPH, RCRA and TCLP Metals	\$1,048.80	per sample	1	\$1,048.80
Task No. 1B - Analysis (Lab Service)				\$3,803.80
RA - UST SUBTOTAL				\$34,791.80
Task No. 2- Consulting/Engineering Costs				
RA Report Preparation	\$100.00	hour	59	\$5,900.00
CADD	\$78.00	hour	16	\$1,248.00
HASP	\$250.00	document	1	\$250.00
Field Sampling Plan	\$100.00	hour	2	\$200.00
UST Closure Plan	\$100.00	hour	8	\$800.00
LSRP	\$158.00	hour	12	\$1,896.00
Field Equipment	\$250.00	day	2	\$500.00
Field Activities	\$100.00	hour	24	\$2,400.00
UST Facility Questionnaire Update	\$100.00	hour	2	\$200.00
NJDEP forms	\$100.00	hour	8	\$800.00
Travel	\$30.00	day	3	\$90.00
EDDs	\$20.00	CD	2	\$40.00
Update CID	\$100.00	hour	4	\$400.00
RAO - 4 Tompkins Street - Entire Site	\$158.00	hour	12	\$1,896.00
Project Management	\$125.00	hour	36	\$4,500.00
Task No. 2- Consulting/Engineering Costs				\$21,120.00
RA SUBTOTAL				\$55,911.80
75% REMEDIAL ACTION COSTS				\$41,933.85
25% OF REMEDIAL ACTION COSTS TO BE CONTRIBUTED BY THE TOWNSHIP				\$13,977.95
TOTAL GRANT REQUESTED AMOUNT				\$41,933.85

Exhibit “B”

Via Email (JSayers@westorange.org)

June 13, 2019

Township of West Orange
66 Main Street
West Orange, New Jersey 07052
Attn: John K. Sayers, Business Administrator

**RE: UNDERGROUND STORAGE TANK REMOVAL
TOWNSHIP OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY
SELECTO FLASH INCORPORATED (FORMER)
18 CENTRAL AVENUE
BLOCK 9, LOT 36
SRP PI NO. 027054
MATRIX NO. 17-296**

Dear Mr. Sayers:

As requested, Matrix New World Engineering, Land Surveying and Landscape Architecture, P.C. (Matrix) is pleased to submit this proposal for environmental services for the removal of a 10,000 gallon underground storage tank at the Selecto Flash property located at 18 Central Avenue, West Orange, New Jersey (Block 9; Lot 36). The Township of West Orange (Township) has previously prepared and submitted a Hazardous Discharge Site Remediation Fund (HDSRF) grant to the New Jersey Economic Development Authority (NJEDA) and New Jersey Department of Environmental Protection (NJDEP) for this work. This grant application has been approved by the NJEDA and the monies to complete the remediation are available.

The scope of this project includes the removal and potential soil remediation of a 10,000-gallon fuel oil UST at the Selecto Flash property. The RA is scoped to comply with the Site Remediation Reform Act (SRRA), N.J.S.A 58:10C-1 et seq., the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, the Technical Requirements for Site Remediation (TRSR), N.J.A.C. 7:26E, and applicable NJDEP Guidance Documents. Oversight of remedial activities will be conducted by a Matrix Licensed Site Remediation Professional (LSRP).

The objective of this Scope of Work is for the removal of one 10,000-gallon Number 4 fuel oil UST, prepare a Remedial Action Report documenting the closure of the UST, and issue the final remedial document, if remediation is complete, for this Area of Concern.

SCOPE OF SERVICES

The scope of services and associated fee is described in detail below:

Task 1: UST Closures

As part of this task, Matrix and its subcontractors will complete the removal and decommissioning of the existing 10,000-gallon Number 4 heating oil UST located at 18 Central Avenue. Although it is uncertain at this time if the UST has impacted subsurface soil and/or groundwater, Matrix has budgeted for the removal of up to 100 tons of soil from the excavation once the UST has been removed. During decommissioning activities, costs for oily water/sludge disposal is also budgeted. Following the closure of the 10,000-gallon UST, Matrix will prepare the NJDEP UST Facility Registration Form delisting the UST from the NJDEP's UST database. Once the UST has been removed, the excavation will be backfilled with certified clean fill, which will meet the current NJDEP *Fill Material Guidance for SRP Sites*.

Following the removal of the UST, Matrix will collect post excavation soil samples to document the condition of the soils surrounding the UST. If soil sample analysis confirms that UST has caused a discharge, Matrix will notify the Township and discuss procedures for the notification of the NJDEP Spill Hotline.

Task 2: Remedial Action Report

Following the removal of the UST and a review the analytical results, Matrix will prepare the *Remedial Action Report* (RAR). The report will be prepared in accordance with N.J.A.C. 7:26E-4.8. The RAR will discuss the results of the sampling and will include the following:

- A summary of all remediation performed, including the closure of the UST, associated disposal documentation, and clean fill certification.
- Results of all analyses required, copies of laboratory data sheets and conversion of the laboratory deliverable to the required electronic data deliverables pursuant to N.J.A.C. 7:26E-2.1.
- A summary table of analytical methods and quality assurance indicators pursuant to N.J.A.C. 7:26E-2.2.
- Sample summary tables of all analyses, including sample location, media, sample depth and field and lab identification numbers pursuant to N.J.A.C. 7:26E-3.13(c)3. The summary tables will identify contaminant concentrations exceeding the applicable remediation standards, samples with elevated method detection limits (MDLs) exceeding their applicable remediation standard will be identified and explained, and the remaining requirements pursuant to N.J.A.C. 7:26E-3.13(c)3 will be met.
- Field data from each sampling point, including field instrument readings for each sample will be generated and presented in the Summary Report.
- A figure will be prepared indicating the results of the scope of any required remediation area and any necessary post excavation samples. This figure will identify contaminant exceedances above their respective remedial standard by contaminant and depth.
- Submit a completed case inventory document worksheet and all other NJDEP required forms.

COSTS

The following are our fixed fee costs for the tasks described herein. All work will be conducted in accordance with the attached standard terms and conditions and LSRP Special Provisions.

Task 1 – UST Closures	\$34,791.80
Task 2 – Remedial Action Report	<u>\$21,120.00</u>
Total Fixed Fee Cost for Scope of Work	\$55,911.80
 75% of Remedial Action Cost Covered by Grant	\$41,933.85
 25% of Remedial Action Costs to be Contributed by the Township.....	\$13,977.95

CLOSING

Any item listed above which is not ordered will not be billed. Separate authorization from the client will be requested prior to commencing services outside the scope of this proposal.

All out-of-pocket expenses including, but not limited to, application fees, laboratory testing costs, mylar copies, certified mailings, photographs, blueprints, and special deliveries are considered additional to the proposal items

unless specifically noted within the scope of this proposal.

The terms and conditions of this proposal are subject to the attached Matrix Terms and Conditions for Professional Services.

This proposal is submitted solely and exclusively for the use of Township of West Orange for consideration of the professional services of Matrix. Disclosure of this proposal's content to any third party without prior written authorization from Matrix is expressly prohibited.

In addition to the specific items as listed herein, the client may be required to demonstrate compliance with certain permit and approval conditions as may be imposed by one or more of the regulatory agencies. These conditions may require revisions to the plans and/or preparation of additional supporting documentation. This proposal does not include these additional items unless specifically outlined within the scope of this proposal. Based on the results of the post excavation soil samples additional work may be required and costs will be provided under separate proposal.

PAYMENT SCHEDULE

Payment shall be in accordance with the Charges, Billing, and Payment schedule outlined in the Terms and Conditions attached to this proposal unless prior written arrangements have been made with Matrix.

Please indicate your acceptance of this proposal by signing in the space provided below and returning one copy to this office. Acceptance of this proposal signifies the clients' understanding that Matrix will not be retained or asked to perform any services unless funding is secured and is available to pay all invoices within 30 days. Receipt of the signed proposal shall be considered authorization to proceed with all items described within this agreement. Any items not intended to be authorized shall be clearly and specifically noted as such within the client's signed and returned proposal.

We thank you for the opportunity to be of service to you on this project. Matrix is prepared to implement the described Scope of Work upon receiving a signed copy of this letter. If you have any questions or require any additional information, do not hesitate to contact us at (973) 240-1800.

Sincerely,



Thomas DeMichele, LSRP
Senior Project Manager



Robert Meisner, P.E., LSRP
Director, LSRP Services

Authorization to Proceed: _____
Name/Title

Date: _____

Copy to: Richard Trenk, Esq., McManimon, Scotland, Baumann, LLC
Mark Moon, Esq., McManimon, Scotland, Baumann, LLC
Mr. Leonard Lepore, Municipal Engineer, Township of West Orange

**ATTACHMENT 1
TERMS AND CONDITIONS**

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES
Matrix New World Engineering, Land Surveying and Landscape Architecture, PC

Section 1: SERVICES

Matrix New World Engineering, Land Surveying and Landscape Architecture, PC (Matrix) agrees to perform the professional services (the "Services") as described in the Proposal incorporated herein by reference for the CLIENT on a best efforts, time and materials basis under the terms and conditions set forth below. Matrix reserves the right to amend the contents of the Proposal, if written authorization is not received within 90 days. These Terms and Conditions together with the Proposal constitute the agreement between Matrix and the CLIENT for the Services (the "Agreement").

Section 2: COMPENSATION

The CLIENT shall be responsible for all costs specifically enumerated in the proposal. For any costs set forth in the proposal as a range, Matrix shall provide CLIENT with an exact cost as soon as it can be estimated.

CLIENT shall also be responsible for any REIMBURSABLE COSTS not specifically set forth in the proposal. REIMBURSABLE COSTS include: out-of-pocket expenses, the cost of which shall be charged at actual cost plus an administrative charge of fifteen percent (15%) and shall be itemized and included in the invoice. Typical out-of-pocket expenses shall include, but not be limited to, travel expenses (lodging, meals, etc.), job-related mileage at the prevailing IRS mileage rate, long distance telephone calls, printing and reproduction costs, and survey supplies and materials.

Section 3: CLIENT'S OBLIGATIONS

To assist Matrix in performance of the Services, CLIENT shall provide Matrix with appropriate material, data and information in its possession pertaining to the specific project or activity.

The CLIENT will advise Matrix of the nature and extent of the hazardous waste at the site. If Matrix discovers after it undertakes the Services that the site is of a different nature of hazard as defined by the client, or if unanticipated hazards are presented, the CLIENT and Matrix agree that the scope of services, schedule and estimated budget fee shall be adjusted as needed to complete the work without injury or damage.

Section 4: INVOICE PROCEDURE AND PAYMENT

Matrix will submit invoices to the CLIENT monthly and a final bill upon completion of the Services. Payment is due thirty (30) days from invoice date. CLIENT agrees to pay a finance charge of one and one-half percent (1.5%) per month, or the maximum rate allowed by law on past due accounts. CLIENT will be liable for all court costs, disbursements, and attorney's fees incurred in the collection of any outstanding invoices.

Section 5: OWNERSHIP OF DOCUMENTS

All survey notes, drawings, bills of materials, specifications, blueprints, reports, calculations and all other material prepared in connection with the specific project shall be property of the CLIENT and shall be transferred to the CLIENT upon completion of the project and upon receipt of complete payment for the scope of work outlined in the proposal. Matrix may retain a single copy of such information and documents.

Section 6: CONFIDENTIALITY

Matrix agrees to keep confidential and not to disclose to any person or entity, other than Matrix's employees and subcontractors, without the prior consent of the CLIENT, all data and information not previously known to and generated by Matrix, or furnished to Matrix and marked CONFIDENTIAL by the CLIENT in the course of Matrix's performance hereunder; provided, however, that this provision shall not apply to data which are in the public domain, or were previously known to Matrix, or were acquired by Matrix independently from third parties not under obligation to CLIENT to keep said data and information confidential. CLIENT shall not restrict Matrix from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction.

The technical and pricing information contained in any proposal submitted by Matrix as to this project, or in the Agreement or any addendum thereto, is to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without express written consent of Matrix.

Section 7: BURIED UTILITIES

Matrix will conduct the research that in our professional opinion is necessary to locate utility lines and other man-made objects that may exist beneath the sites surface. The CLIENT recognizes that Matrix's research may not identify all subsurface utility lines and man-made objects. Matrix will take reasonable precautions to avoid damage or injury to any subsurface utilities or structures. The CLIENT agrees to hold Matrix harmless and the CLIENT agrees to pay for damages to underground utilities or structures which are not called to Matrix's attention or correctly shown on plans furnished by the CLIENT or third parties.

Section 8: DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS

Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. Matrix and the CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work and compensation for the Services or termination of the Agreement. Matrix agrees to notify the CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The CLIENT encourages Matrix to take measures that in Matrix's professional opinion are justified or legally required to preserve and protect the health and safety of Matrix's personnel and the public, and/or the environment, and the CLIENT agrees to compensate Matrix for the additional cost of such work.

In addition, the CLIENT waives any claim against Matrix, and agrees to indemnify, defend and hold Matrix harmless from any claim or liability for injury or loss arising from Matrix's encountering of unanticipated hazardous materials or suspected hazardous materials. The CLIENT also agrees to compensate Matrix for time spent and expenses incurred by Matrix in defense of any such claim, with such compensation to be based upon Matrix's prevailing fee schedule and expense reimbursement policy.

Section 9: STANDARD OF CARE

The Services provided by Matrix under the Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee, in fact or by law, whether of merchantability or fitness for a particular purpose or otherwise, is included or intended in the Agreement, or in any report, opinion, document or otherwise.

The CLIENT recognizes that subsurface conditions may vary from those encountered at the location where, and at the time when, borings, sampling, or testing are performed by Matrix and that the data provided by Matrix are based solely on the information available to Matrix. The CLIENT agrees to indemnify and hold Matrix harmless from and against all claims, damages, losses and expenses arising from the interpretation by others of data provided by Matrix.

Section 10: INDEPENDENT CONTRACTOR

Matrix shall be an independent contractor in performing the Services and shall not act as an agent or employee of the CLIENT. As such, and subject to the terms and conditions hereof, Matrix shall be responsible for its employees, subcontractors, and agents and for their compensation, benefits, contributions, and taxes, if any.

Section 11: JOBSITE HEALTH AND SAFETY

Insofar as jobsite safety is concerned, Matrix is responsible solely for its own employees' and subcontractor's activities on the jobsite, but this shall not be construed to relieve the CLIENT or his contractors from their responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the jobsite.

Section 12: INSURANCE

Matrix is protected by: 1) Worker's Compensation Insurance as required by applicable law, 2) General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage, and 3) Professional Liability (Errors & Omissions) with policy limits equal to at least \$1,000,000. Matrix shall provide insurance certificates illustrating the coverage herein defined to the Board prior to commencing work at the site.

Within the limits of said insurance, Matrix agrees to save the CLIENT harmless from and against loss, damage, injury or liability arising from negligent acts or omissions of Matrix, its subcontractors, and their respective employees and agents acting in the course and scope of this project. Matrix shall not be responsible for any loss, damage, or liability arising from any acts by the CLIENT, its agents, staff, and other consultants and subcontractors employed by the Client.

Section 13: INDEMNITY

A. Matrix

Matrix agrees to indemnify and hold harmless CLIENT from and against any and all losses, damages, liabilities, and expenses (including, but not limited to, legal fees and costs of investigation) to the extent resulting or arising out of negligence or willful misconduct of Matrix or performance of the Services hereunder, provided that such loss, damage, liability or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and not caused in whole or in part by any acts or omissions of the CLIENT, a third party, or anyone directly or indirectly employed by the CLIENT.

B. CLIENT

The CLIENT, agrees to indemnify and hold harmless Matrix from and against any and all losses, damages, liabilities, and expenses (including, but not limited to, legal fees and costs of investigation) to the extent resulting or arising out of negligence or willful misconduct of the CLIENT, or anyone directly or indirectly employed by the CLIENT, or the performance of the CLIENT's obligations under the Agreement, any non-conforming wastes waste(s) or discrepancies in the pertinent manifest(s) as defined by applicable regulations, or an condition existing at the work site(s) prior to the date of the Agreement or caused by anyone directly or indirectly employed by the CLIENT.

Section 14: LIMIT OF LIABILITY

Notwithstanding any other provision contained in the Agreement

- A. In no event shall Matrix, its employees, agents, or sub-contractors be responsible for any incidental, indirect, impact, or consequential damages (including loss of profits), liabilities or expenses incurred by the CLIENT or any third party as a result of Matrix's performance or nonperformance of the Services contracted for herein, and the CLIENT waives all such incidental, indirect, impact, or consequential damages.
- B. The obligations of Matrix under the Agreement are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of parent or affiliate of Matrix, or any of their respective officers, directors, shareholders, partners, principals, members, managers, beneficiaries, employees or agents.
- C. Matrix's total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way related to the Agreement from any cause or causes, including but not limited to Matrix's errors, negligence, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the total contract amount for the Services provided by Matrix or the limit of liability available at the time of the claim, whichever is lesser.
- D. To the maximum extent permitted by law, the limitations on damages, the releases from liability, the limitations of liability, and the exclusive remedies provisions expressly provided in the Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of Matrix. The remedies provided in the Agreement are exclusive, except that the CLIENT shall in addition have the right to obtain specific performance and all other injunctive relief that may be available. Matrix disclaims, and the CLIENT waives, any implied warranties of merchantability or fitness for a particular purpose with respect to any equipment or other personal property procured by Matrix and provided to the CLIENT as part of any Services.

Section 15: PROJECT DELAYS

If Matrix is delayed at any time in performing the Services for any specific project or activity by an act, failure to act, or neglect of the CLIENT or the CLIENT'S employees or any third parties; by changes in the scope of work; by unforeseen circumstances including delays authorized by the CLIENT and agreed to by Matrix; by acts of force majeure including, without limitation, fires, floods, riots, and strikes; by delays caused by foreign or domestic governmental acts or regulations; or by any cause beyond the reasonable control of Matrix, then the time for completion of the Services shall be extended based upon the impact of the delay. Matrix shall receive an adequate compensation adjustment if the delays caused by any of the above result in changes, require additional services, or result in additional costs to Matrix.

Section 16: ASSIGNMENT

Matrix shall not assign the Agreement in whole or part except that Matrix may use the services of persons and entities not in its employ, when it is appropriate to do so. Such persons and entities include, but are not limited to, surveyors, specialized consultants, drilling contractors, and testing laboratories. Matrix's use of others for additional services shall not be unreasonably restricted by the CLIENT provided Matrix notifies the CLIENT in advance.

Section 17: THIRD PARTY EXCLUSION

The Agreement shall not create any rights or benefits to parties other than the CLIENT and Matrix, except such other rights as may be specifically called herein.

Section 18: SEVERABILITY

If any clause or section of the Agreement shall be deemed void or invalid, such a decision shall only apply to that particular section(s) and shall not render the rest of the Agreement invalid. The balance of the Agreement shall remain in force.

Section 19: TERMINATION

Matrix may terminate the Agreement upon five (5) days' notice if the CLIENT defaults in the payment for the Services or for any other material default by the CLIENT under the Agreement. The CLIENT or Matrix may terminate the Agreement upon fourteen (14) days' notice for any reason which may arise or for no reason. In the event of such termination of the Agreement for any reason which may arise or for no reason, the termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall affect termination of the cause therefore, the CLIENT shall within thirty (30) calendar days of termination remunerate Matrix for the Services rendered and costs incurred (including all reimbursable costs hereunder), in accordance with Matrix's prevailing rate schedule.

Section 20: GOVERNING LAW

Unless otherwise provided in an addendum, the law of the State of New Jersey will govern the validity of the Agreement, its interpretation and performance, and remedies for contract breach or contract breach or any other claims related to the Agreement.

**ATTACHMENT 2
FEE SCHEDULE**