

MASTER INDUSTRIAL HYGIENE SERVICE CONTRACT

This Master Industrial Hygiene Service Contract ("Contract")-- Terms and Conditions is entered into by and between DNA Industrial Hygiene, Dan Napier, CIH, having offices and place of business at 2520 Artesia Boulevard, Redondo Beach, CA 90278-3210 Telephone 800or310-644-1924 ("The Industrial Hygienist") and, _____, having its offices at _____, _____, _____, _____, _____, _____, Telephone _____ Fax _____ E-Mail. _____

It is contemplated that The Industrial Hygienist will perform industrial hygiene services and hazardous material consultation services and environmental assessments, audits, studies, engineering and various environmental activities which may be required by Client's staff or by The Client's facilities, and related tasks ("Assessments") for The Client at or concerning designated plants or other facilities of operation or sites (each of which is referred to herein as a "Facility") and that the legal relationship between The Industrial Hygienist and The Client with respect to such Assessments will be governed by the terms and conditions of this Contract as supplemented by written implementing letter agreements of each Assessment. The Assessments may include providing advice and judgement; preparing permits; conducting engineering studies; conducting environmental audits and risk assessments; conducting Industrial Hygiene surveys or evaluations; providing regulatory analysis; providing experienced personnel to supplement The Client's staff on an interim basis; initially assessing and managing site investigations and cleanups; reviewing reports; reviewing data sets; reviewing auditing programs or portfolio management; Client Staff training Safety & Health Program evaluation or development inspection for compliance or maintenance of compliance and associated services.

Therefore, in consideration of the mutual promises and covenants contained herein, The Client and the Industrial Hygienist agree as follows:

1. SERVICES TO BE PROVIDED BY INDUSTRIAL HYGIENIST PURSUANT TO THIS CONTRACT:

1.1 The Industrial Hygienist shall provide such professional Industrial Hygiene services and related services, products and materials as may be mutually agreed upon by The Client and The Industrial Hygienist and set forth in the respective Work Orders, Purchase Orders or Job Orders "Work Orders" issued pursuant hereto. If anything in any such Work Order conflicts with the provisions hereof, the Work Orders will be superior in both intent and effect and will govern. The latest Work Order will govern over any prior Work Order covering the same Work if there is a conflict between Work Orders only when the work has not commenced. Work already completed shall be governed by the work order that implemented the work.

1.2 The Industrial Hygienist may rely only on written instructions, directions, or authorization from The Client to enter upon or perform any of the Work on any particular Property owned, financed, or other designated by The Client.

1.3 The Industrial Hygienist acknowledges that the Properties may be occupied (by the Client, its affiliates or unaffiliated occupants) during the course of the Work, and agrees to conduct itself at all times in accordance with high standards of professionalism and courtesy. The Industrial Hygienist shall desist immediately from performing Work on a Property at The Client's request in the event that, in the reasonable judgement and written direction of The Client, The Industrial Hygienist's activities constitute a nuisance or interruption in the activities of such Property's occupants. Immediately upon so desisting the Work, The Industrial Hygienist shall contact The Client to reschedule the Work for a mutually agreeable time. The Industrial Hygienist shall be entitled to such additional fees for such rescheduling as provided above.

2. RESPONSIBILITIES OF THE CLIENT PURSUANT TO THIS CONTRACT:

2.1 The client shall provide The Industrial Hygienist with such information as The Industrial Hygienist may reasonably request that The Client has, or has access to, with respect to each designated Facility including, but not limited to, the following: general facility descriptions, maps, plant layout drawings, environmental data reports, environmental inspection reports, permit applications, permits, safety rules and regulations, and correspondences with environmental agencies.

2.2 It is the Client's responsibility to disclose to The Industrial Hygienist the existence and nature of any and all encumbrances, defect or circumstances of which the Client is, or reasonably should be, aware that may affect the value, usefulness, environmental status, or salability of the property upon which the work is to be, or is being, performed. In addition, unless they are clearly identifiable in the field, it is The Client's responsibility to disclose to The Industrial Hygienist the presence and accurate location of man-made objects relative to any field tests or boring locations. The client warrants the accuracy and sufficiency of the information, plans, specifications and other materials that it provides to The Industrial Hygienist for use in connection with The Industrial Hygienist performing its services under this Contract, irrespective of whether such information and materials are provided directly by The Client to The Industrial Hygienist or indirectly from one of The Client's other contractors.

2.3 The Client will arrange and provide for such access to the Facility as is necessary for The Industrial Hygienist to perform the work or assessment.

3. COMPENSATION TO INDUSTRIAL HYGIENIST: INVOICES: RECORDS:

3.1 The Client will pay the Industrial Hygienist the following fees for the services listed hereafter:

| | |
|---------------------------------|--|
| Certified Industrial Hygienist | \$_____ per hour/4 hour minimum for field work |
| Industrial Hygienist Technician | \$_____ per hour/4 hour minimum for field work |
| Clerical | \$_____ per hour |

3.2 The Client agrees to pay the above hourly rates, and they shall reflect premium rates as follows: Ten percent for off hours work, 25 percent for Saturday work and more than eight hours per shift, and 30 percent for hours more than 12 per shift, Sunday, National Holiday or hours scheduled on an Emergency basis. For the purpose of this agreement an Emergency or unplanned event occurs when notice to proceed is provided on a Saturday, Sunday, or National Holiday or less than 48 hours prior to the project start date and time.

3.3 The client agrees and understands that if any portion of the above compensation or cost become delinquent, the Client agrees to pay interest thereon at the rate of 11.5 percent per annum, billed monthly at the rate of .9583% on the unpaid balance, on said account from the due date until paid, and further agrees to pay all costs of collection thereof, including reasonable attorneys' fees.

3.4 The client shall compensate The Industrial Hygienist for its services performed in rendering each Assessment, including the following:

3.4.1 The Industrial Hygienist's fees for its consultation and advice:

3.4.1.1 All reasonable out-of-pocket expenses incurred in connection with rendering the Assessment, including the following:

3.4.1.2 reasonable travel and living expenses:

3.4.1.3 reasonable cost of reproduction services performed by The Industrial Hygienist in its offices;

3.4.1.4 long distance telephone calls; and

3.4.1.5 delivery or express mail charges.

3.4.2 costs of report preparation, including.

3.4.2.1 The Industrial Hygienist's direct charges from others, subcontractors and independent contractors, e.g., laboratory, testing, tank removal, earth work, etc., at The Industrial Hygienist's actual cost plus The Industrial Hygienist's then current standard handling fees.

3.4.2.2 Cost of Government records, reports and chain of title documents.

3.5 The Industrial Hygienist shall be compensated for its services and expenses in accordance with The Industrial Hygienist's then current standard rates and charges per paragraph [3.1](#) and [3.4](#). The Industrial Hygienist shall submit its invoice, together with supporting documents that The Client may reasonably request. The invoice shall include the "Purchase Order" or other documents that the Client provided to order the work. Electronic documents (facsimile or Email) constitute written instructions. The Client shall pay the amount shown to be due on each invoice within 30 days after receipt thereof.

3.6 The Industrial Hygienist shall maintain accurate records of all reimbursable costs, and such records shall be open to inspection and audit by The Client at all reasonable times during the term of this contract and for a period of three (3) years after its termination.

3.7 The Client and Industrial Hygienist agree that any contest as to the accuracy of the billing or invoice shall be made within thirty days of the receipt of the initial bill or invoice. Thirty days after the receipt of the billing, it shall be considered to be correct, due and payable.

3.8 In the event that litigation that is not related to the Industrial Hygienist's performance, or the client's payment of properly documented billings requires that the Industrial Hygienist testify at trial or deposition the Client agrees that the Industrial Hygienist will be compensated as an expert witness. Excepting only such liability as may arise out of the sole negligence of the expert in performance of services under this contract. The current rates for that work will apply for trial testimony or deposition rates as determined by the current Court Rules.

4. STANDARD OF PERFORMANCE; SOLE AND EXCLUSIVE STANDARD BY WHICH INDUSTRIAL HYGIENIST'S PERFORMANCE IS MEASURED:

4.1 The Industrial Hygienist will perform its services under this Contract as an independent contractor/the Industrial Hygienist utilizing reasonable care and skill in accordance and consistent with customary industry standards. This standard of care is the sole and exclusive standard of care that will be applied to measure The Industrial Hygienist's performance of its services or the creation of its work product. There are no other representations or warranties made by The Industrial Hygienist. In particular, but not by way of limitation, The Industrial Hygienist makes no representation or warranty that the Industrial Hygienist's advice, recommendations, findings or conclusions, will result in compliance with applicable law or provide a perfect result. Moreover, to the extent allowed by law, any and all implied representations or warranties arising out of the services or the creation of the work product are hereby expressly disclaimed and negated; IN PARTICULAR, BUT NOT BY WAY OF LIMITATION, NO IMPLIED WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

4.2 All advice, recommendations, finding and conclusions made by the Industrial Hygienist will be made to the best of the Industrial Hygienist's knowledge opinion and belief, based upon information made available to The Industrial Hygienist at the time of review, and upon a variety of factors which include, but are not limited to, the following: federal, state and local laws, rules, codes, regulations and ordinances; market conditions; energy costs; wage rates; and political climate. A change in any of the factors upon which the review is based may adversely affect the advice, recommendations, findings, and conclusions expressed by The Industrial Hygienist.

4.3 On occasion, The Industrial Hygienist's performance of the Assessment under this Contract will involve discussions with governmental agencies or third parties which the governmental agency or third party does not document, and thereafter, there arises a difference of opinion as to what was represented by the agency or third party in those discussions. To the extent The Industrial Hygienist communicates those agency or third party representations to the Client, The Industrial Hygienist shall have no responsibility or liability, in contract or tort, to The Client so long as the Industrial Hygienist communicated the representations to the best of the Industrial Hygienist's knowledge, opinion and belief.

5. INDUSTRIAL HYGIENIST'S WORK PRODUCT IS EXCLUSIVELY FOR THE CLIENT, AND EXCLUSIVELY FOR THE PURPOSES CONTEMPLATED BY THE PARTIES WITH RESPECT TO THIS CONTRACT:

5.1 The services to be performed by The Industrial Hygienist under this Contract and the work product (including the Reports) to be created by The Industrial Hygienist are solely for the benefit of The Client. This Contract shall not be construed as creating any contractual relationship of any kind between The Industrial Hygienist and any third party. It is the intent of The Industrial Hygienist and The Client that there are no third party beneficiaries of this Contract. The fact that The Client may enter into other agreements with third parties which provide The Industrial Hygienist the authority to inspect or reject work being performed by the third party shall not give rise to any duty or responsibility on the part of The Industrial Hygienist in favor of such third party.

5.2 The data, information, Reports and other materials provided by the Industrial Hygienist to The Client in connection with the services shall be utilized by The Client only for the purposes contemplated by this Contract and shall not be disseminated or provided by The Client to third parties for their use. Safety plans, training documents, applications may be provided to the Client in the form of either printed or electronic media. The material in the program is for the benefit and use of the Client only and cannot be resold or distributed in any form except for their own employees or media for The Client. The Industrial Hygienist retains the Copyright for all training materials, applications and other work.

6. LIMITATIONS ON The Client'S RIGHTS AND REMEDIES:

6.1 The Industrial Hygienist shall not be liable in any way for services that are performed or work product (including Reports) prepared in accordance with the prescribed standard of care or for the failure to discover any condition that, pursuant to that standard, could not reasonably have been discovered as a result of the services performed or work product prepared by The Industrial Hygienist.

The Industrial Hygienist's recommendations regarding safety and health risks arise from observations made at the time of the survey or work and do not reflect any or all hazards that may arise later, or that may occur outside of the surveillance of the Industrial Hygienist.

Recommendations or findings are submitted for your approval and implementation. The test results are described and a recommended action may be suggested. Recommendations are developed from conditions observed at the time of our visit. They do not necessarily include every possible loss potential, code violation, or exception to good practice. Reports apply only to the sample, or samples, investigated and is not necessarily indicative of the quality or condition of apparently identical or similar products or conditions. As a mutual protection to the Clients, the public and the Industrial Hygienist, all reports, findings and opinion is submitted by the Industrial Hygienist and accepted by the Client for the exclusive use of the Client to whom it is addressed and upon the condition that it is not to be used, in whole or in part, in any advertising or publicity matter without prior written authorization from the Industrial Hygienist.

6.2 The Client agrees that The Industrial Hygienist's liability for damage arising out of or relating to any error, omission or other professional negligence in the performance of its services under this Contract or otherwise, whether The Client's claim be based in contract, tort, or otherwise, shall be limited to a sum not to exceed the contract price under this Contract defined as the total person time charges and reimbursable expenses paid to The Industrial Hygienist under this Contract. In no event will The Industrial Hygienist's directors, officers, employees or agents be liable to The Client for any liabilities, losses, damages or expenses of any nature whatsoever, whether direct or indirect, caused by or resulting from the services or the use of the work product (including the Reports).

7. INDEMNIFICATION:

7.1 The Client will indemnify and hold harmless The Industrial Hygienist, its directors, officers, agents, contractors, and employees against any and all claims, demands or causes of action, and all costs, losses, liabilities, expenses and judgments incurred in connection therewith, including attorneys' fees and court costs, brought by any of The Client's employees or representatives, or by any third party, based upon, in connection with, resulting from or arising out of The Client's actions or inactions under this Contract or The Client's use of the Work.

8. OWNERSHIP OF WORK PRODUCT:

8.1 All Reports prepared by The Industrial Hygienist for The Client pursuant to this Contract shall become the property of The Client. The Industrial Hygienist shall have the right to utilize the general knowledge, skill and experience developed under this Contract to continue to provide its services to others. The Industrial Hygienist shall provide the Client with the original field reports, laboratory forms, reports and written recommendations. The Industrial Hygienist does not maintain records, data or original writings, all documents are provided to The Client for their exclusive use. The Client agrees to maintain the records as required by law. the Client may not resell or distribute any programs, training materials, or reports except for the internal exclusive use of the Client, and it's direct employees. The Industrial Hygienist retains the Copyright for all training materials, applications and other work.

9. TERMINATION:

9.1 Either The Client or The Industrial Hygienist may terminate any and all Implementing Letter Agreements, as well as this Contract (which will effect a termination of all of the Implementing Letter Agreements), at any time on not less than thirty (30) days prior written notice. Within ten (10) days after receipt of the notice of termination, The Industrial Hygienist shall furnish The Client a written invoice of services performed through the date of termination under the terminated Implementing Letter Agreement(s). Within thirty (30) days after receipt of such invoice, The Client shall pay The Industrial Hygienist for the invoiced services and, except for the one copy allowed pursuant to Section [8](#), The Industrial Hygienist shall promptly deliver to The Client the originals and all copies of all data prepared or obtained by The Industrial Hygienist in connection with the terminated Implementing Letter Agreements. The continuing terms, conditions, limitations and obligations of the parties hereunder, such as the obligations of Section [8](#), shall survive the termination of this Contract or any of the Implementing Letter Agreements.

9.2 Severability. In case any one or more provisions set forth in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, legality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated herein.

10. SECRECY:

10.1 The Client may make available to The Industrial Hygienist certain technical data and other information which constitutes a protected trade secret of The Client. So long as and to the extent that such data and other information is reduced to writing and denominated "confidential" by The Client, The Industrial Hygienist shall use reasonable efforts to keep such data and information from being disclosed to others except to the extent necessary to enable The Industrial Hygienist to perform its services hereunder. The Industrial Hygienist shall similarly obligate any and all others, to whom such data and information is released, irrespective of whether The Client designates the data or information as "confidential." The Industrial Hygienist

shall have no obligation of confidence with respect to any portions thereof which (i) were previously known to The Industrial Hygienist in the absence of a prior obligation to The Client, (ii) are in the public domain, (iii) hereafter become part of the public domain through no fault of The Industrial Hygienist, (iv) are later obtained by The Industrial Hygienist from others who owe no obligation of confidence to The Client with respect thereto, or (v) are later independently developed by The Industrial Hygienist without use of The Client's confidential information. The duties and rights of the parties under Paragraph [3](#) are exclusive and are in lieu of any other duties and rights otherwise imposed or provided by law.

11. SPECIAL PROVISIONS WITH RESPECT TO INDUSTRIAL HYGIENIST'S ACTIVITIES ON The Client'S SITE:

11.1 In the event The Industrial Hygienist enters upon The Client's plant site or facility for any purpose, including, without limitation, observing and evaluating plant engineering and support services, the following shall apply:

(a) The Industrial Hygienist shall observe applicable Safety Rules and Regulations while on the plant or facility site, a copy of which will be provided to The Industrial Hygienist.

(b) While The Industrial Hygienist shall take reasonable measures and precautions to minimize damage to the Facility and any improvements located thereon as a result of their work or the use of equipment, it is agreed that The Client shall absorb the cost of all damage or alterations to the Facility which are required in order for The Industrial Hygienist to perform the Assessment or to use their equipment pursuant to this Contract. It is recognized and agreed that The Industrial Hygienist has not included in its fee the cost of restoration or damage which might occur to the Facility. If The Client desires or requests The Industrial Hygienist to restore the Facility to its former condition, upon written request The Industrial Hygienist will perform such additional work as is necessary to do so and The Client shall compensate The Industrial Hygienist for the costs thereof.

12. SUBCONTRACTORS AND INDEPENDENT CONTRACTORS:

12.1 Sub-Contractors and independent contractors may assist under this Agreement without obtaining prior written notification to The Client. The Industrial Hygienist may subcontract to others those aspects of the services to be performed hereunder which The Industrial Hygienist usually provides through subcontractors.

12.2 The Industrial Hygienist may perform the Work for The Client under this Agreement not only through its own employees but also through the professional services of individuals retained by The Industrial Hygienist as independent contractors. Such individuals may provide their professional services through sole proprietorships, professional corporations,

professional associations or partnerships. When The Industrial Hygienist utilizes the services of such independent contractors, they will provide proof of workers compensation and general public liability insurance and shall notify The Client of the limits of such insurance. The Industrial Hygienist shall remain fully responsible to The Client for the Work to be performed under this Agreement even though some aspects thereof are performed by professionals serving The Industrial Hygienist as independent contractors. All of the terms and conditions hereof, including all disclaimers and limitation of liability, shall be apply in favor of such independent contractors as if they were parties to this Agreement. Provided that The Client has paid The Industrial Hygienist for the services of The Industrial Hygienist's subcontractors and independent contractors, The Industrial Hygienist shall be responsible for the payment of the appropriate sums to its subcontractors and independent contractors for their services, fees and expenses and shall take such steps as are necessary to prevent or remove any liens, including mechanic's and material men's liens, and may be filed against The Client's Facility by such subcontractors and independent contractors.

13. MISCELLANEOUS:

13.1 This Contract shall not be assignable by either party without the prior written consent of the other.

13.2 Any notice expressly provided for herein shall be in writing, shall be given either manually, or by mail, telegram, telex, Email or facsimile (FAX), DNA Fax 310-937-8642 Client Fax _____ and shall be deemed sufficiently given if and when received by the party to be notified at its address first set forth above or if and when mailed by registered mail, postage prepaid, addressed to such party at such address. Either party may, by notice to other, change its address for receiving such notices.

13.3 Written communications shall include any electronic documents, facsimile, Email, or electronically submitted document (Signed PDF or like instrument), not necessarily a paper wet signed document. A copy of the signed document or an electronically signed document shall have the same weight and meaning as a wet signed original written instruction.

13.4 This Contract shall be construed and the rights of the parties are to be determined according to the laws of the State of California. This contract has been negotiated in Manhattan Beach, California and therefore jurisdiction in any dispute arising out of this agreement shall be in Manhattan Beach, California.

13.5 Conflict of Interest. Neither The Industrial Hygienist nor any subcontractor of The Industrial Hygienist shall pay any commissions or fees or grant any rebates or other remuneration or gratuity to any employee or office of The Client. Neither shall The Industrial Hygienist nor any subcontractor grant any secret rebates, one to the other, and neither shall The Industrial Hygienist nor any subcontractor pay any commissions or fees to the employees or officers of the other in connections with Work performed hereunder.

13.6 This Contract and the Implementing Letter Agreement constitute the full understanding between the parties hereto with reference to the subject matter thereof and the particular Assessment. All prior and contemporaneous discussions, representations, statements and understandings are merged into this Contract and the Implementing Letter Agreement for the particular Assessment. As such, no representation, statement or understanding, whether written or oral, not expressly contained in this Contract or the Implementing Letter (Purchase Order or other written documentation, Agreement for the particular assessment/work project shall be binding upon either party.

IN WITNESS WHEREOF, The Client and the Industrial Hygienist have executed this Master Industrial Hygiene Service Contract through their authorized representatives on the date hereafter stated to be effective as of the day and year stated above.

DNA Industrial Hygiene, Dan Napier,
CIH
CSLB # 773462 A HAZ

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

on _____

on _____