

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

FILED  
2001 FEB 14 10:01 AM  
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA

Chapter 7

Trustee.

**CHAPTER 7 TRUSTEE'S MOTION TO EMPLOY AMEC EARTH AND ENVIRONMENTAL INC. AS ENVIRONMENTAL CONSULTANTS**

Yvette J. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, requests that the Court approve the Trustee's retention of AMEC Earth and Environmental Inc. ("AMEC") to render professional services to the Trustee as an environmental consultant in connection with (i) the Trustee's Motion to Assume and Assign El Paso Warehouse Lease to Safeway Inc. and (ii) the Trustee's Second Motion to Extend Time Within Which the Debtor May Assume or Reject the El Paso Warehouse Lease (the "Motions"), and the objections thereto filed by the landlord of the subject property, and in support hereof states:

1. On February 8, 2001, Furr's Supermarkets, Inc. (the "Debtor") commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

2. On December 19, 2001, the Debtor converted the case to a Chapter 7 bankruptcy case, and the Trustee was appointed the interim Chapter 7 trustee.

3. The Trustee wishes to employ AMEC to provide professional services as an environmental consultant to the Trustee in connection with litigation between the Trustee and the landlord over the Motions. AMEC is well qualified to provide the environmental consulting services to the Trustee in this case. AMEC has represented in its disclosure filed pursuant to

1774

Bankruptcy Rules 2014 and 2016 (the "AMEC Disclosure") that, to its knowledge, it does not have any interests that are materially adverse to the Trustee or the estate.

4. In general, the professional services AMEC would render to the Trustee are:

(a) Reviewing the report on the environmental condition of the El Paso warehouse prepared by Raba-Kistner Consultants, Inc. (the "Landlord's Environmental Experts");

(b) Preparing a rebuttal report, and reviewing and rebutting any additional or supplemental work or reports done by the Landlord's Environmental Experts;

(c) Assisting the Trustee in the deposition of the Landlord's Environmental Experts;

(d) Testifying at the final hearing on the Motions; and

(e) Providing such other environmental consulting services as the Trustee may request and AMEC may agree to perform.

5. A copy of AMEC's engagement letter (the "Engagement Letter") is attached hereto as Exhibit A and incorporated herein by reference. AMEC seeks a determination that the rates described in the Engagement Letter are reasonable and appropriate and meet with this Court's approval.

6. To the best of Trustee's knowledge, information, and belief, employment of AMEC would be in the best interest of the estate, and AMEC has no interest that is adverse to the Trustee, the estate, its creditors, or any other party in interest or their respective attorneys, other than any interests set forth in the AMEC Disclosure.

7. The fees, costs, and gross receipts tax that AMEC would charge the Trustee are set forth in the Engagement Letter.

8. AMEC requests that the Trustee be authorized to make interim payments to AMEC on a monthly basis, upon receipt of AMEC's billing statements and prior to the Court's determination of the allowability of AMEC's compensation, equal to 75% of its fees and associated gross receipts tax, and 100% of any reimbursable costs and gross receipts tax.

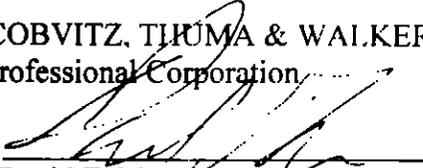
9. Because AMEC's employment likely will terminate after the final hearing on the Motions, the Trustee asks that the Court allow AMEC to file a final fee application as soon as his services to the estate have been fully performed.

10. Pursuant to the Stipulation and Consent Order (I) Approving Compromise and Settlement Between the Trustee on Behalf of the Estate, Heller Financial, Inc., Bank of America, N.A., Fleet Capital Corporation and Metropolitan Life Insurance Company and (II) Resolving all Objections Thereto, entered by the Court on or about July 25, 2002 as docket #1766, the amounts paid to AMEC will be paid out of the proceeds of the warehouse lease assignment, or other lender collateral, and therefore will not reduce the amount available to pay estate creditors.

11. AMEC's employment is in the best interest of the estate and should be made effective as of the date this application is filed.

WHEREFORE Trustee requests approval of the Court to employ AMEC to provide environmental consulting services pursuant to 11 U.S.C. § 327(a) under the terms of the Engagement Letter and this Motion, effective as of the date hereof, to make interim payments to AMEC prior to allowance of compensation, as described above, and for all other just and proper relief.

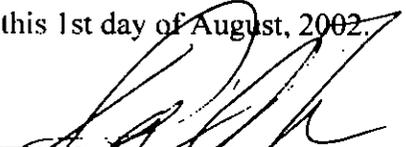
JACOBVITZ, THUMA & WALKER  
A Professional Corporation

By:   
David T. Thuma  
500 Marquette N.W., Suite 650  
Albuquerque, New Mexico 87102  
(505) 766-9272  
(505) 766-9287 (fax)  
Attorneys for the Chapter 7 Trustee

This certifies that a copy of  
the foregoing document was  
served by first class mailed on:

United States Trustee  
P.O. Box 608  
Albuquerque, NM 87103

this 1st day of August, 2002.

  
David T. Thuma



August 1, 2002  
AMEC Proposal 02-07-53E

Yvette Gonzalez, Chapter 7 Trustee  
c/o Jacobvitz, Thuma & Walker  
500 Marquette Avenue, NW, Suite 650  
Albuquerque, NM 87102

Attn: Mr. David Thuma

Re: **Environmental Support Services**  
**9820 Railroad Drive**  
**El Paso, Texas**

Dear Mr. Thuma:

Based on our conversations, we understand that you, on behalf of your client, wish to retain AMEC Earth & Environmental, Inc. (AMEC) to provide environmental support services for proceedings associated with a real estate transaction and potential pending litigation. We further understand that our work will focus primarily on review of studies on the subject property by others, and confirmation of their findings.

The work scope to be conducted is not fully specified, but will likely include the following tasks:

- reviewing available data,
- conducting on-site visit,
- conducting site-specific sampling and analysis to confirm studies by others,
- interpretation of data,
- providing summaries of appropriate regulatory criteria,
- providing expert witness testimony,
- general support services as directed.

Costs for all services will be in accordance with our standard unit fees, a copy of which is attached.

It is anticipated that the initial task will include a site visit and a review of Phase I and II Environmental Site Assessment (ESA) reports generated for the parcel. The purpose of the site visit will be for key AMEC personnel to gain an initial understanding of site conditions. Additional visits may be required to review site conditions or conduct supplemental studies. No budget is set for preliminary tasks, but AMEC can provide cost estimates for future tasks prior to initiation. It should be understood that due to the nature of requested support services, cost estimates for various tasks may need to be increased from time to time as new information becomes available or as your needs change. Due the nature of support services, costs outside the budget of specific tasks may be accrued.

It is understood that all work will be conducted for Jacobvitz, Thuma & Walker; however, notwithstanding any contrary provision in the attached Terms & Conditions, Yvette Gonzalez, the Chapter 7 Trustee for the Property will be responsible for payment of all invoices. It should be noted that AMEC will conduct a credit review, and if necessary require a retainer prior to the initiation of any work. A credit form is attached for your convenience.

AMEC Earth & Environmental, Inc.  
125 Montoya Road  
El Paso, Texas USA 79902  
Tel 1+ (915) 585-2472  
Fax 1+ (915) 585-2626  
www.amec.com

**EXHIBIT**

**A**



AMEC Proposal 02-07-53E  
Environmental Support Services  
9820 Railroad Drive - El Paso, Texas  
August 1, 2002  
Page (2)

If this letter correctly states the scope of services and responsible party for payment, please sign the attached consulting services agreement and return one copy to us showing your acceptance.

Should you have any questions concerning this proposal, we would appreciate the opportunity to review and clarify.

Respectfully submitted,  
AMEC Earth and Environmental, Inc.

Jamie R. Barnes, P.C.  
Unit Manager

Copies: Addressee (3)

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A handwritten signature in black ink, appearing to read "David Varela".

David Varela  
Project Manager



**STANDARD GEOTECHNICAL & ENVIRONMENTAL  
UNIT FEE SCHEDULE**

**Engineering Department Personnel**

Charges will be made at the following unit rates for all project related time, including travel to and from the project site.

<b>Corporate Consultants Principal/Project Director</b>	<b>\$ 150.00/hr.</b>	<b>Senior Field Professional</b>	<b>\$ 58.00/hr.</b>
<b>Senior Professional Senior Materials Professional</b>	<b>\$ 125.00/hr.</b>	<b>Env. Specialist, Senior Field Inspector Laboratory Technician</b>	<b>\$ 45.00/hr.</b>
<b>Sr. Project Manager</b>	<b>\$ 110.00/hr.</b>	<b>Senior Env. Specialist</b>	<b>\$ 50.00/hr.</b>
<b>Project Manager</b>	<b>\$ 105.00/hr.</b>	<b>Engineering Technician</b>	<b>\$ 40.00/hr.</b>
<b>Senior Professional Engr., Geologist, Hydrologist, Senior Environmental Specialist</b>	<b>\$ 100.00/hr.</b>	<b>Snr. Engineering Technician</b>	<b>\$ 48.00/hr.</b>
<b>Project Engineer, Geologist, Hydrologist, Env. Specialist</b>	<b>\$ 85.00/hr.</b>	<b>Word Processor</b>	<b>\$ 36.00/hr.</b>
<b>Level I Staff Engineer, Geologist, Hydrologist, Env. Specialist</b>	<b>\$ 78.00/hr.</b>	<b>Clerical</b>	<b>\$ 36.00/hr.</b>
<b>Level II Staff Engineer, Geologist, Hydrologist</b>	<b>\$ 68.00/hr.</b>	<b>Draftsperson I</b>	<b>\$ 58.00/hr.</b>
		<b>Draftsperson II</b>	<b>\$ 45.00/hr.</b>
		<b>Contracted Consultants</b>	<b>Cost + 15%</b>
		<b>Personnel Markup for Health and Safety</b>	
		<b>Level C</b>	<b>15%</b>
		<b>Level B</b>	<b>25%</b>

Legal projects requiring deposition or court appearances will be billed at our standard personnel billing rates for all investigative and preparation activities. The rate will be increased 150 percent for deposition and court appearance time.

In-house unit rate schedules for Chemistry and Laboratory Fees available upon request. Chemistry and Laboratory Charges Cost Plus 15%.

All overtime hours worked (in excess of eight hours per day or work on Saturday or Sunday) are subject to 25% markup of listed hourly rates if work is requested by Client or are reasonably necessary to meet job schedules.



**STANDARD GEOTECHNICAL & ENVIRONMENTAL  
UNIT FEE SCHEDULE**

**Vehicles & Miscellaneous Charges**

Printing - 8 1/2" x 11"	\$ 0.20/Page	Indicator Tubes	\$ 5.50/Each
Printing - Other	Cost + 15%	55-Gallon Drums	\$ 50.00/Each
Computer Usage	Cost + 15%	Steam Cleaner	\$ 125.00/Day
Postage, Shipping Charges, Long Distance		Soil Gas Kit	\$ 100.00/Each
Telephone, Miscellaneous	Cost + 15%	Tips	\$ 25.00/Each
Air Fare, Taxi, Car Rental, etc.	Cost + 15%	Hanby Field Test	\$ 35.00/Each
Rented Pickups and Cars	Cost + 15%	Decontamination Equipment	
Rented Heavy Equipment	Cost + 10%	(Sprayers, Buckets, Soap)	\$ 20.00/Day
Chartered Aircraft	Cost + 10%	Air Quality Sampling Equipment	\$ 30.00/Day
Travel Subsistence for Personnel (Usually Billed @		PCB Field Test	\$ 20.00/Test
Per Diem Rate, but in Some Cases at Actual		Colorimetric Field Test	\$ 30.00/Test
Expense	Cost + 15%	Fit Test	\$ 100.00/Man
Per Diem	\$ 70.00/day	Personal Air Sampling Pump	\$ 15.00/Day
Miscellaneous Subcontracts	Cost + 15%	HVAC Sampling Pump	\$ 20.00/Day
Sedans and Pickups -2WD	\$ 0.60/Mile	SCBA, 45 Minute	\$ 100.00/Day
	Or \$55/day	pH/Conductivity Meter	\$ 20.00/Day
Sedans and Pickups - 4WD	\$ 0.62/Mile	Hydropunch	\$ 500.00/Day
	Or \$60/day	Hydropunch Expendibles	
CADD Computer Use	\$ 30.00/Hr.	(Drive Point/Screens)	\$ 65.00/Hole
Generator	\$ 80.00/Day	Electromagnetometer	\$ 60.00/Day
Air Compressor - 175 CFM	\$ 180.00/Day	(3-Day Minimum)	
Acker	\$ 50.00/Day	Magnetometer Polycorder	\$ 40.00/Day
Water Quality Equip.	\$ 50.00/Day	Slug Test System	
Water Probe	\$ 20.00/Day	(Thor or In-Situ) with Data Logger	\$ 150.00/Day
Interface Probe	\$ 25.00/Day	Cable Locator/Metal Detector	\$ 20.00/Day
PID Meter	\$ 100.00/Day	Hand Auger	\$ 35.00/Day
Oxygen/Combustible Gas Meter	\$ 37.50/Day	Pump - 2" Submersible	\$ 100.00/Day
Methane Gas Detector	\$ 37.50/Day	Trash Pump	\$ 60.00/Day
Hydrogen Sulfide Detector	\$ 30.00/Day	Field Computer	\$ 30.00/Day
Respirators with Cartridges	\$ 50.00/Day	Peristaltic Pump	\$ 25.00/Day
Tyveks	\$ 12.00/Each	Pneumatic Pumping System	\$ 25.00/Day
Saranex Tyveks	\$ 22.50/Each	Oil Recovery Pump (4")	\$ 60.00/Day
Carbon Filter	\$ 50.00/Day	Disposable Baller	\$ 16.50/Each
Gloves	\$ 3.50/Each	All other equipment	\$ Cost + 15% or negotiated
Padlocks	\$ 17.80/Each		
Field Chloride Test	\$ 25.00/Day		



**STANDARD GEOTECHNICAL & ENVIRONMENTAL  
UNIT FEE SCHEDULE**

**Quality Control Testing**

**PERSONNEL AND FIELD TESTING**

Engineering Technician	\$33.00/hr
Field Sampling of Soil, Asphalt, etc	\$33.00/hr
Trip Charge for Sampling or Density one test or cancellation	\$15.00
Nuclear Densities 3 or more (no trip charge)	\$20.00/ea
Certified Welding Inspector	\$45.00/hr

Personnel hourly rates are portal to portal, stand-by  
time extra at hourly rate

**LABORATORY TESTS**

<u><b>Soil &amp; aggregates</b></u>	
Sieve Analysis	\$45.00/ea
Sodium Soundness	\$180.00/ea
LA Abrasion	\$150.00/ea
Plasticity Index	\$45.00/ea
Moisture/Density Relationship ASTM D-1557	\$130.00/ea
D-4718 Correction for Large Rock (add to D-1557)	\$30.00/ea

**LABORATORY TESTS (continued)**

<u><b>Concrete</b></u>	
Compressive Strength includes sampling, slump, air, cylinders, curing, testing	\$135.00/set4
Flexural Strength	\$235.00/set4
Mortar sampling, mold cubes, curing, testing and reporting	\$135.00/set6
Grout sampling, slump, cylinders, curing, testing and reporting	\$135.00/set4
<u><b>Asphalt</b></u>	
Extraction/ Gradation	\$130.00/ea
Marshall ( 3 briquets)	\$130.00/ea
Theoretical Maximum Specific Gravity (Rice)	\$70.00/ea
Field sampling not included and is an hourly rate	\$33.00/hr

**FIELD TESTING AND EQUIPMENT**

Compressive Strength of Cores (includes trimming)	\$50.00/ea
Coring Machine ( diamond bit)	\$150.00/day
Schmidt Hammer	\$25.00/day + Tech Time



**SERVICES AGREEMENT**  
Time-and-Materials

THIS AGREEMENT (hereinafter referred to as the "Agreement"), effective this 1 day of August, 2002 is made by and between AMEC Earth & Environmental, Inc. (AMEC), a Nevada corporation, with an address at 125 Montoya Road, El Paso, Texas 79932 (hereinafter referred to as "AMEC") and Yvette Gonzalez, Chapter 7 Trustee c/o Jacobvitz, Thuma & Walker, with an address at 500 Marquette Avenue, NW, Suite 650 (hereinafter referred to as "CLIENT").

NOW, THEREFORE, in consideration of the mutual undertakings and subject to the terms set forth below and intending to be legally bound, the parties agree as follows:

**1. SERVICES:** AMEC will perform for CLIENT services (hereinafter referred to as "Services") as described in Exhibit 1, Proposal No. 02-07-53E dated August 1, 2002, which is attached to and made a part of this Agreement.

**2. COMPENSATION:** AMEC will be compensated for its Services on a time-and-materials basis. AMEC shall be reimbursed for all hours worked and other costs incurred at the rates and terms set forth in Exhibit 1, Proposal. Should the total cost of AMEC's performance be greater than the estimated amount shown in Exhibit 1, AMEC will notify CLIENT and provide a revised estimate for CLIENT's approval. In such event, continued performance is subject to additional funding as mutually agreed. In addition to the amount shown in Exhibit 1, CLIENT assumes full responsibility for the payment of any applicable sales, use, or value-added taxes under this Agreement, except as otherwise specified.

Invoices will be submitted at least monthly for Services rendered. Terms of payment are net thirty (30) days from date of invoice with a one and one-half percent (1.5%) per month service charge on balances past due. Interest shall be computed from the date of invoice. Payment will be made to AMEC at:

**Remittance Address:**

AMEC Earth & Environmental, Inc.  
Post Office Box 24445  
Seattle, WA 98124-0445

**Send Wire To:**

AMEC Earth & Environmental, Inc.  
Account No. 4159633338  
Wells Fargo ABA No. 121000248

CLIENT's payment shall represent CLIENT's acceptance of the Services invoiced by AMEC.

Upon CLIENT's failure to make payment in accordance with the terms hereof, AMEC may suspend performance of Services under this Agreement until AMEC has been paid in full for all balances past due including applicable service charges.

**3. STANDARD OF CARE:** AMEC will strive to perform Services in a manner consistent with that level of care and skill ordinarily exercised by other members of AMEC's profession currently practicing in the same locality under similar conditions.

NO OTHER REPRESENTATION, GUARANTEE, OR WARRANTY, EXPRESS OR IMPLIED, IS INCLUDED OR INTENDED IN THIS AGREEMENT, OR IN ANY COMMUNICATION (ORAL OR WRITTEN), REPORT, OPINION, DOCUMENT, OR INSTRUMENT OF SERVICE.

**4. INDEPENDENT CONTRACTOR:** AMEC shall be fully independent and shall not act as an agent or employee of CLIENT. AMEC shall be solely responsible for its employees and for their compensation, benefits, contributions, and taxes, if any.

**5. INSURANCE:** AMEC currently carries Worker's Compensation Insurance as required by applicable law and Commercial General Liability and Automobile Liability Insurance for bodily injury and property damages.

**6. CHANGES:** CLIENT may order changes within the general scope of the Services by altering, adding to, or deleting from the Services to be performed. Further, if AMEC believes any subsurface or physical condition at or contiguous to the site is of an unusual nature and differs materially from conditions generally encountered or generally recognized as inherent in the character of Services provided in this Agreement, a change exists. If any such change causes an increase or decrease in AMEC's cost of, or the time required for, the performance of any part of the Services, a mutually acceptable equitable adjustment shall be made to the price and performance schedule of this Agreement.

**7. FORCE MAJEURE:** Should performance of Services by AMEC be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to: acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by AMEC; fires; floods; labor disturbances; and unusually severe weather. AMEC will be granted a time extension and the parties will negotiate an equitable adjustment to the price of this Agreement, where appropriate, based upon the effect of the Force Majeure on performance by AMEC.

US-3 T&M  
Time & Materials Agreement

**8. INSTRUMENTS OF SERVICE:** All reports, drawings, plans, or other documents (or copies) furnished to AMEC by the CLIENT, shall at CLIENT's written request, be returned upon completion of the Services hereunder; provided, however, that AMEC may retain one (1) copy of all such documents. All reports, drawings, plans, documents, software, source code, object code, field notes and work product (or copies thereof) in any form prepared or furnished by AMEC under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with AMEC. CLIENT's right of use of instruments of service, if any, is limited to that use specified in Exhibit 1. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

**9. CLIENT'S RESPONSIBILITIES:** CLIENT agrees to: (i) provide AMEC all available material, data, and information pertaining to the Services, including, without limitation, the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any site, any hazards that may be present, the nature and location of underground or otherwise not readily apparent utilities, summaries and assessments of the site's past and present compliance status, and the status of any filed or pending judicial or administrative action concerning the site; (ii) convey and discuss such materials, data, and information with AMEC; and (iii) ensure cooperation of CLIENT's employees.

CLIENT shall indemnify, defend, and save AMEC harmless from and against any liability, claim, judgement, demand, or cause of action arising out of or relating to: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors, or agents; (iii) any allegation that AMEC is the owner or operator of a site, or arranged for the treatment, transportation or disposal of hazardous materials, including all adverse health effects thereof; and (iv) site access or damages to any subterranean structures or any damage required for site access.

In addition, where the Services include preparation of plans and specifications and/or construction oversight activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and save harmless AMEC from and against loss, damage, injury, or liability attributable to personal injury or property damage arising out of or resulting from such contractors' performance or nonperformance of their work.

**10. SITE ACCESS:** CLIENT shall at its cost and at such times as may be required by AMEC for the successful and timely completion of Services: (i) provide unimpeded and timely access to any site, including third party sites if required; (ii) provide an adequate area for AMEC's site office facilities, equipment storage, and employee parking; (iii) furnish all construction utilities and utilities releases necessary for the Services; (iv) approve all locations for digging and drilling operations; and (v) obtain all permits and licenses which are necessary and required to be taken out in CLIENT's name for the Services.

**11. WARRANTY OF TITLE, WASTE OWNERSHIP:** CLIENT has title, free of any claim or encumbrance by others, to the materials and sites with respect to which CLIENT may request Services. Title and risk of loss with respect to all materials shall remain with CLIENT, who shall be considered the generator of such materials, and CLIENT shall execute all manifests as the generator of such materials. CLIENT, as generator, shall be liable for the arrangement, transportation, treatment, and/or disposal of all material at any site at which Services are requested.

**12. LIMITATION OF LIABILITY:** As part of the consideration AMEC requires for provision of the Services indicated herein, CLIENT agrees that any claim for damages filed against AMEC by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against AMEC or its successors or assigns and that no individual person shall be made personally liable for damages, in whole or in part.

CLIENT's sole and exclusive remedy for any alleged breach of AMEC's standard of care hereunder shall be to require AMEC to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of AMEC for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to AMEC for the Services or \$50,000, whichever is less. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after substantial completion of the Services.

AMEC and CLIENT shall not be responsible to each other for any special, incidental, indirect, or consequential damages (including lost profits) incurred by either AMEC or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

**13. ASSIGNMENT AND SUBCONTRACTING:** This Agreement does not create any right or benefit in anyone other than CLIENT and AMEC and shall not be assigned by either party without the prior written approval of the other party. AMEC may, however, subcontract portions of the Services to a qualified subcontractor without prior approval of CLIENT.

**14. PROBABLE COST:** AMEC does not guarantee the accuracy of probable costs for engineering services. Such probable costs represent only AMEC judgment as a professional and, if furnished, only for CLIENT's general guidance.

**15. TERMINATION:** AMEC may terminate this Agreement if CLIENT becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntary or involuntary) or makes an assignment for the benefit of creditors. Either party may terminate this Agreement at any time, with or without cause, upon ten (10) days prior written notice to the other party. CLIENT shall compensate AMEC for all Services performed hereunder through the date of termination and all-reasonable costs and expenses incurred by AMEC in effecting the termination, including non-cancelable commitments and demobilization costs.

**16. DISPUTE RESOLUTION:** If a claim, dispute, or controversy arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, AMEC and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of AMEC and CLIENT. If such negotiations are unsuccessful, AMEC and CLIENT agree to attempt to settle the dispute by arbitration if both parties agree. If the dispute can not be settled through arbitration, AMEC and CLIENT agree to attempt to settle the dispute through good faith mediation. If the dispute can not be resolved through mediation and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in the state of the AMEC office entering into this Agreement.

The non-prevailing party in any litigation shall reimburse the prevailing party for the prevailing party's documented legal costs (including reasonable attorneys' fees), in addition to whatever other judgment or settlement sums may be due.

**17. WAIVER OF TERMS AND CONDITIONS:** The failure of either AMEC or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement or the waiver by AMEC or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

**18. SEVERABILITY:** Every term or condition of this Agreement is severable from others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.

**19. GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the state of the AMEC office entering into this Agreement.

**20. NONDISCRIMINATION AND AFFIRMATIVE ACTION:** AMEC agrees to comply with Executive Order 11246 and the applicable federal regulations pertaining to nondiscrimination and affirmative action, including the Equal Opportunity Clause, the Affirmative Action Clause for Handicapped Workers, and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era. Further, AMEC agrees that its facilities are not segregated.

**21. ENTIRE AGREEMENT:** The terms and conditions set forth herein constitute the entire understanding and agreement of AMEC and CLIENT with respect to the Services. All previous proposals, offers, and other communications relative to the provisions of these Services are hereby superseded. Any modification or revision of any provision set forth herein or any additional provision contained in any purchase order, acknowledgment, or other form of the CLIENT is hereby superseded and expressly objected to by AMEC and shall not operate to modify this Agreement. Should CLIENT utilize its purchase order to procure services, CLIENT agrees to reference this Agreement as governing terms and conditions. Any pre-printed terms and conditions on the CLIENT's purchase order shall not apply.

In witness whereof, CLIENT and AMEC have caused this Agreement to be executed by their respective duly authorized representatives as of the date first set forth above.

<b>CLIENT</b>	<b>AMEC Earth &amp; Environmental, Inc.</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

ATTACHMENT: Exhibit 1, Proposal No. 02-07-53E dated August 1, 2002