



## Santa Barbara Unified School District

CONTRACT FOR CONSULTING SERVICES  
(Underground Storage Tank Reimbursement Services)  
November 1, 2013

### SCOPE OF SERVICES

The EquoLogic Group (EquoLogic) will provide services to Santa Barbara Unified School District (Client) for the District's site located at 700 E. Anapamu Street in Santa Barbara, California, as described below:

1. Request and submittal of information to the UST Cleanup Fund to reopen Claim Number 18782.
2. Submittal of information requested by the Fund in order to complete the UST Claim Application.
3. Review and assembly of appropriate accounting, invoice records, regulatory directives, proposals and reports to determine eligibility of various corrective action costs.
4. Preparation and submittal of Reimbursement Request (RR), which will seek reimbursement of environmental investigation, corrective action, monitoring and case closure expenses incurred at the site (minus the appropriate deductible amount which is anticipated to be \$10,000).
5. Communication and correspondence with Cleanup Fund staff as required in order to obtain a Letter of Commitment (LOC), which grants entry into the Cleanup Fund, as well as reimbursement of the eligible costs included in the Reimbursement Request (RR).

### COMPENSATION

EquoLogic offers the scope of services described above on a Contingency Compensation basis. These terms allow the Client to avoid any expenditure until and unless reimbursement is received directly from the UST Cleanup Fund. If Client does not receive any reimbursement funding, EquoLogic will waive fees for the services provided. EquoLogic is to be paid a flat fee of 10% of all funds Client receives from the Cleanup Fund plus any direct (reimbursable) expenses that have been previously authorized by the District. EquoLogic is to be paid within 30 days of Client's receipt of reimbursement from the State UST Cleanup Fund. Up to \$3,000 of the fees paid to EquoLogic, is also reimbursable by the Cleanup Fund.

This Agreement is subject to the following General Conditions:

#### SECTION 1: FEE PAYMENT

- 1.1 Payment is due within 30 days of Client's receipt of any Fund reimbursement.
- 1.2 If payment is not made within the appropriate time frame described above, the Client will also pay a finance charge thereon of 1.5 percent, or the maximum rate allowed by law, whichever is less, for each month thereafter - or portion thereof - that the amount remains unpaid.
- 1.3 If Client fails to pay EquoLogic within sixty (60) days after of the appropriate time frame described in Items 1.1 or 1.2, EquoLogic may deem failure to pay a breach of this Agreement, terminate the same, and be relieved of any and all duties under this Agreement.

#### SECTION 2: PROJECT INFORMATION

2.1 Client will provide to EquoLogic in writing information known to Client regarding corrective action and associated costs at this site. Client will provide this information as requested, in digital format, via email or hard digital device. The information may include without limitation, as appropriate to the work, all invoices and accounts payable records, fee records, permits, applications, technical reports, and property records.

2.2 Client will immediately transmit to EquoLogic any updates, revisions, or additions to the Project Information as they become available to Client. EquoLogic is authorized to communicate directly with Cleanup Fund on behalf of Client, as needed.

#### SECTION 3: OWNERSHIP OF DOCUMENTS; CONFIDENTIALITY, PATENTS AND COPYRIGHTS

3.1 EquoLogic will prepare and deliver the Cleanup Fund claim application and reimbursement request to Client as instruments of the professional services performed ("Reports"). All Reports delivered to Client will become the property of Client upon final payment due EquoLogic for the Work. EquoLogic may retain copies of the Reports for its files.

3.2 Client agrees that all Reports furnished to the Client that are not paid for will be returned to EquoLogic upon written demand by EquoLogic and will not be used by Client for any purpose.

3.3 EquoLogic will retain Reports and all pertinent records ("Records") relating to the Work for a period of three (3) years after the Report is delivered. During that time, the Reports and Records will be made available to Client during EquoLogic's normal business hours.

3.4 Reports and Records are not suitable for use or reuse by Client, its employees, agents, or subcontractors on any continuation or extension of the Work or on any other project without the written consent of EquoLogic. This consent is required to permit EquoLogic to evaluate Report and Record applicability under new circumstances such as, but not only, passage of time. Client agrees to indemnify, defend, and hold EquoLogic harmless from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, awards, fines, or judgments arising out of or resulting from the unauthorized reuse of any Reports or Records.

3.5 All Reports, Records, and Project Information disclosed or delivered to EquoLogic, or information that EquoLogic uncovers, acquires, or generates in the course of performing the Work will be treated by EquoLogic as confidential information and will not be disclosed or made available to others (other than the Fund) by EquoLogic without prior consent of Client. The foregoing obligation will not apply to any information that EquoLogic establishes: (a) is already known to EquoLogic at the time of its receipt accessible to the public through no fault of EquoLogic, (c) is disclosed to EquoLogic by a third party on a non-confidential basis, (d) is deemed necessary by EquoLogic to warn of an imminent danger to life or property, or (e) is required to be disclosed pursuant to legal process, subpoena, court order, applicable law, or agency regulation.

3.6 Notwithstanding any other provision to the contrary, EquoLogic retains the right of ownership of any patentable or copyrightable concepts arising from its services.

#### SECTION 4: STANDARD OF CARE

4.1 EquoLogic will perform the Work consistent with that level of care and skill ordinarily exercised by members of its profession currently practicing under similar conditions. EquoLogic makes no other warranties with regard to the Work.

4.2 EquoLogic will not be responsible for the interpretation of its data by others.

#### SECTION 5: INDEMNIFICATION AND LIMITATION OF LIABILITY

5.1 Client and EquoLogic each agree to indemnify and hold the other (and its officers, employees, and agents) harmless for losses resulting from and to the extent of its own negligence or willful misconduct.

5.2 Client and EquoLogic each agree that neither will be responsible for any incidental, indirect, or consequential damages (including loss of profits) sustained by the other, its successors or assigns.

5.3 Nothing herein will be deemed a waiver of any statutory limitation of liability or any obligation set out in this Agreement.

5.4 EquoLogic's liability for claims (other than claims covered by EquoLogic's obligation to the Client under Section 5.1) will not exceed payments received from the Client for the Work.

#### SECTION 6: ATTORNEY'S FEES

In the event of any controversy, claim, dispute, or litigation between the parties related to this Agreement or its breach, the prevailing party will be entitled to recover from the other party, in addition to other relief as may be granted, a reasonable sum as and for its attorney's fees together with expert's fees and other costs incurred as may be determined by a court of competent jurisdiction. Client also agrees to pay all costs of collection, including reasonable attorney's fees, in the event payment is not received as provided herein; this liability for attorney fees is not contingent upon suit being filed by EquoLogic.

## SECTION 7: FORCE MAJEURE

If completion of any portion of the Work is delayed for causes beyond the control of or without the fault of EquoLogic including Force Majeure, the time of performance of the Work will be extended for a period equal to the delay. Force Majeure includes, without limitation, acts of God; acts of the public enemy; acts of federal, state, local, or foreign governments; acts of Client's subcontractors or agents; fires; floods; epidemics; strikes; riots; freight embargoes; and unusually severe weather.

## SECTION 8: TERMINATION

8.1 This Agreement may be terminated by either party upon ten (10) calendar days written notice. If this Agreement is terminated prior to completion of all reports contemplated herein or if the Work is suspended for more than three (3) months, EquoLogic may complete analyses that are in progress and may also complete a summary report on the Work done prior to termination.

8.2 Upon termination, EquoLogic will be paid for services, plus reasonable termination expenses, which expenses will include direct costs of completing the analyses, and summary report referred to above.

## SECTION 9: ASSIGNMENT

Neither party may delegate duties or assign interest in this Agreement without obtaining the prior written consent of the other party, which consent will not be unreasonably withheld.

## SECTION 10: INSURANCE

EquoLogic will carry and maintain in effect during the life of this Agreement the following policies of insurance issued by an insurance company rated not less than A-, VI in Best Insurance Rating Guide and admitted to transact insurance business in California: commercial general liability insurance (including contractual, products, and completed operations coverages, bodily injury, and property damage liability insurance) with single combined limits of not less than \$1,000,000 per occurrence, with a \$2,000,000 aggregate. If requested, EquoLogic shall contain an endorsement naming the Client as an additional insured insofar as this Agreement is concerned, and provide that written notice shall be given to the Client at least thirty (30) days prior to cancellation or material change in the form of the policy or reduction in coverage.

At the Client's written request, EquoLogic shall furnish a certificate of insurance containing the endorsements required under this Section, and client shall have original insurance policies upon request. Upon notification of receipt of a notice of cancellation, change, or reduction in coverage, EquoLogic shall immediately file with the client a certified copy of the required new or renewal policy and certificates for such policy.

Nothing in this section concerning minimum insurance requirements shall reduce a party's liabilities or obligations under the indemnification provisions of this Agreement.

## SECTION 11: MISCELLANEOUS

11.1 The section headings of this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of any provision.

11.2 The parties acknowledge that this Agreement supersedes all written and oral agreements, if any, between the parties, and that this Agreement constitutes the entire and only agreement pertaining to the Work.

11.3 This Agreement will be binding upon and will inure to the benefit of the parties and their successors and assigns.

11.4 This Agreement will be construed, the rights and obligations created hereby will be governed, and the remedies available will be provided in accordance with the laws of the state in which the Work is performed, regardless of the conflict of law principles customarily applied by the courts of any jurisdiction. Venue and adjudication will be in that state.

11.5 Any of the terms or conditions of this Agreement may be waived at any time by the party that is entitled to benefit from, but no waiver will affect or impair the right of the waiving party to require observance, performance, or satisfaction of any other term or condition hereof. Any of the terms or provisions of this Agreement may be amended or modified at any time by agreement in writing executed by each party hereto.

11.6 All provisions of this Agreement allocating responsibility between Client and EquoLogic will survive the completion of the Work or termination of this Agreement.

11.7 Any provision or part of this Agreement adjudicated to be void or unenforceable under any law will be deemed deleted, such deletion to apply only with respect to the jurisdiction in which such adjudication is made, and all remaining provisions will continue to be valid and binding upon the parties. The parties agree that this Agreement will be reformed to replace the deleted provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the deleted provision.

11.8 In keeping with the intent of the parties that this is the entire Agreement between them, the parties agree that the preprinted terms and conditions of any Client activating letter / purchase order issued to request Work pursuant to this Agreement will not apply to the Work, regardless of whether EquoLogic executes the activating letter / purchase order in acceptance of the Work.

11.9 Client has authority to enter into this Agreement and any person signing it on Client's behalf has been duly authorized to sign.

WHEREUPON, the parties caused this Agreement to be duly executed and to be effective on the Date(s) designated below:

SIGNATURES

**The EquoLogic Group**



\_\_\_\_\_  
Susan Garner, PG, CEG  
Principal Geologist

Date: 11/1/13

**Santa Barbara Unified School District**

Authorized representative:

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Printed Name and Title