

**LEGISTAR NO.**

**140807**

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL  
CIRCUIT IN AND FOR ALACHUA COUNTY FLORIDA

AKIRA WOOD,INC. a Florida  
Profit Corporation and The Baird  
Center Association, Inc., a Florida not  
for profit corporation  
Plaintiff,

v.

Case#: **2015 CA 710**  
**DIV. J**

ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC.  
a foreign corporation, CITY OF GAINESVILLE,  
a municipal corporation, d/b/a Gainesville Regional Utilities,  
TANKTEK, INC. a Florida profit corporation  
d/b/a ENVIROTEK and STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, a Political  
Department of the State of Florida.  
Defendants.

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**COMPLAINT**

The Plaintiffs, Akira Wood, Inc. (hereinafter "Akira") and The Baird Center Association, Inc.(hereinafter, "Baird"), sues the Defendants, Environmental Consulting & Technology Inc.,(hereinafter "ECT"), City of Gainesville, (hereinafter "GRU"), Tanktek, Inc. d/b/a ENVIROTEK (hereinafter "Enviro") and State of Florida Department of Environmental Protection (hereinafter "DEP") and alleges:

**GENERAL ALLEGATIONS AND BACKGROUND**

1. This is a cause of action seeking damages that exceed \$15,000 exclusive of attorney fees and costs.

2. The Plaintiff, Akira Wood, Inc., is a Florida Corporation which owns improved property and does business in Alachua County, Florida.

3. The Plaintiff, Baird is a Florida not for profit corporation which owns improved property and does business in Alachua County, Florida.

4. The Defendant, GRU, is a municipal corporation in the State of Florida engaged in the services of public utilities, including, but not limited to, water and sewer distribution and collection in Alachua County, Florida.

5. The Defendant, ECT, is a Foreign Corporation doing business in Alachua County Florida.

6. The Defendant, Enviro, is a Florida for Profit Corporation doing business in Alachua County Florida.

7. The Defendant, DEP, is a Political Department of the State of Florida charged with protecting the environment including the remediation of polluted soil and ground water throughout the State of Florida.

8. That at various times prior to April of 2012 the Defendants, GRU and DEP determined that the soil surrounding and beneath a building located on the Plaintiff's property in Alachua County as well as adjacent properties were contaminated by coal-tar and petroleum and other pollutants.

9. That in 2002 the Plaintiff, Akira constructed a new building on the southeastern corner of its property and placed certain computerized cutting equipment therein for the purpose of conducting its business in Alachua County Florida.

10. That at various times material to this cause of action the Defendants, GRU and DEP retained the Defendant, ECT to perform certain remedial work describe hereinafter upon property adjacent to the Plaintiff's property.

11. That at various times material to this cause of action the Defendant, ECT retained the services of the Defendant, Enviro, to perform various portions of the remedial work as described hereinafter.

12. That sometime in early 2009 the Plaintiff and the Defendant, GRU entered into a

contract allowing the Defendant, GRU, and its contractor, the Defendant ,ECT, to enter its property and perform certain remedial actions related to the cleanup of polluted soil and water on the Defendant, GRU's adjacent property. The Plaintiff is not in possession of the fully executed original contract and demands that the Defendant, GRU, produce same. The Plaintiff attached an unsigned draft of the agreement as Plaintiff's Exhibit #A.

13. That as part of the remedial action conducted by the Defendants, GRU, DEP and ECT constructed a containment wall consisting of sheet piles anchored by 50 helical anchors driven into the ground at various intervals along the southern and eastern boundaries of the Plaintiff's property. (See Paragraph #5 of Plaintiff's Exhibit #A)

14. That the Defendants, GRU, DEP and ECT contemplated that their above described activities would cause damage to the Plaintiffs' property and particularly the building located on the southeastern corner of its property and promised to document the condition of the Plaintiff's structure before installing the containment wall. (See Plaintiff's Exhibit #A at paragraph #5)

15. That during the initial pile driving activities as described in plaintiff's Exhibit #A the Defendant's GRU, DEP, ECT and Enviro, determined that these pile driving activities had destabilized the Plaintiff's property and building thereon and requested that the contract between the Plaintiff and Defendant GRU be extended so that the Defendants, GRU, ECT and Enviro could stabilize the Plaintiff's property by performing additional pile driving and stabilizing activities.

16. That the Plaintiff, Akira agreed to extend the contract with the Defendants, GRU and DEP, and allowed the Defendants ,GRU, DEP, ECT and Enviro to perform additional pile driving on and adjacent to its property between December of 2011 and April of 2012. See Plaintiff's Exhibit # B)

**COUNT ONE**  
**STRICT LIABILITY**  
**GRU**

17. The Plaintiffs re-allege and re-avers all of the matters and things contained in paragraphs (1) thru (16) and by reference makes them a part of this Count.

18. The Defendant's remediation and pile driving activities as described above on and adjacent to the Plaintiff's property were an ultra-hazardous activity.

19. That as a direct and proximate result of the Defendant, GRU's pile driving activities the Plaintiffs sustained damages to its property and building as well as to the contents of the building; its business was disrupted and the Plaintiffs will incur similar losses and damages in the future.

WHEREFORE the Plaintiffs sue the Defendants, City Of Gainesville, d/b/a Gainesville Regional Utilities and State of Florida Department of Environmental Protection for damages in excess of \$15,000 together with interest and court costs and demands trial by jury of all issues.

**COUNT TWO  
STRICT LIABILITY  
ECT**

20. The Plaintiffs re-alleges and re-avers all of the matters and things contained in paragraphs (1) thru (16) and by reference make them a part of this Count.

21. The Defendant's remediation and pile driving activities as described above on and adjacent to the Plaintiff's property were an ultra-hazardous activity.

22. That as a direct and proximate result of the Defendant, ECT's pile driving activities the Plaintiffs sustained damages to its property and building as well as to the contents of the building; its business was disrupted and the Plaintiffs will incur similar losses and damages in the future.

WHEREFORE the Plaintiffs sue the Defendant, Environmental Consulting & Technology Inc. for damages in excess of \$15,000 together with interest and court costs and demands trial by jury of all issues.

**COUNT THREE  
STRICT LIABILITY  
ENVIRO**

23. The Plaintiffs re-allege and re-avers all of the matters and things contained in paragraphs (1) thru (16) and by reference makes them a part of this Count.

24. That the Defendant's remediation and pile driving activities as described above on and

adjacent to the Plaintiff's property were an ultra hazardous activity.

25. That as a direct and proximate result of the Defendant, ENVIRO's pile driving activities the Plaintiffs sustained damages to it's property and building as well as to the contents of the building; it's business was disrupted and the Plaintiffs will incur similar losses and damages in the future.

WHEREFORE the Plaintiffs sue the Defendant, EnviroTek Corporation for damages in excess of \$15,000 together with interest and court costs and demands trial by jury of all issues.

**COUNT FOUR  
STRICT LIABILITY  
DEP**

26. The Plaintiffs re-allege and re-avers all of the matters and things contained in paragraphs (1) thru (16) and by reference makes them a part of this Count.

27. That the Defendant's remediation and pile driving activities as described above on and adjacent to the Plaintiff's property were an ultra hazardous activity.

28. That as a direct and proximate result of the Defendant, ENVIRO's pile driving activities the Plaintiffs sustained damages to it's property and building as well as to the contents of the building; it's business was disrupted and the Plaintiffs will incur similar losses and damages in the future.

WHEREFORE the Plaintiffs sue the Defendant, State of Florida Department of Environmental Protection for damages in excess of \$15,000 together with interest and court costs and demands trial by jury of all issues.

**COUNT FIVE  
PROMISSORY ESTOPPEL  
GRU, DEP, ECT & ENVIRO**

29. The Plaintiffs re-allege and re-avers all of the matters and things in paragraphs (1) thru (16) and Counts One, Two, Three, Four and Five and by reference make them a part of this Count.

30. That the efforts to repair the Plaintiff's building taken by the Defendants as described above together with the written promises contained in Plaintiff's Exhibit #B caused the Plaintiff to reasonably believe that the Defendants would treat the Plaintiffs fairly, would accept full responsibility for the damages to its property and business and compensate the plaintiff fairly and fully for its losses

without the necessity of bringing a lawsuit.

31. The Defendants should have expected that the Plaintiffs would rely on their written and oral promises as well as their actions in its forbearance of a lawsuit.

32. That as a direct and proximate result of the promises made by the Defendants the Plaintiffs delayed bringing an action for damages based on strict liability (Counts One ,Two and Three) or seek damages for inverse condemnation(Count Five).

33. The Defendants are responsible for attorney fees and cost as the Defendants wrongful act required litigation and has placed the Plaintiffs in such relation with others making it necessary to incur expenses to protect their interest including reasonable attorney fees and costs, BAXTER'S ASPHALT & CONCRETE V. LIBERTY COUNTY, 406 So. 2d 461, (Fla. 1981).

WHEREFORE the Plaintiffs, sue the Defendants GRU, DEP, ECT and ENVIRO for damages in excess of \$15,000 plus interest court costs and attorney fees and demands trial by jury of all issues.

**COUNT SIX  
INVERSE CONDEMNATION  
GRU**

34. The Plaintiffs re-allege and re-avers all of the matters and things contained in paragraphs (1) thru (16) and by reference make them a part of this Count.

35. That the actions taken by the Defendant GRU both in 2011 and 2012 in an effort to complete the remediation of the Plaintiff's property constituted the taking of the Plaintiff's property by government actions.

36. That the Plaintiffs have been required to retain the undersigned attorney to bring this action and claims entitlement to reasonable attorney fees pursuant to *F.S. Section 73.091 and 73.092*.

37. That as a direct and proximate result of the Defendant, GRU's condemnation and taking of its\ 's property the Plaintiffs have suffered the loss of the use of its property and its contents; its business operations have been disrupted; the value of its property has been reduced and the plaintiffs will suffer similar losses in the future.

WHEREFORE the Plaintiffs sue the Defendant, City of Gainesville for damages in excess of \$15,000 plus interest court costs and attorney fees and demands trial by jury of all issues.

**COUNT SEVEN  
INVERSE CONDEMNATION  
DEP**

38. The Plaintiffs re-allege and re-avers all of the matters and things contained in paragraphs (1) thru (16) and by reference makes them a part of this Count.

39. That the actions taken by the Defendant, DEP both in 2011 and 2012 in an effort to complete the remediation of the Plaintiffs property constituted the taking of the Plaintiffs property by government actions.

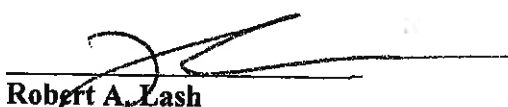
40. That the Plaintiffs have been required to retain the undersigned attorney to bring this action and claims entitlement to reasonable attorney fees pursuant to *F.S. Section 73.091 and 73.092*.

41. That as a direct and proximate result of the Defendant, DEP's condemnation and taking of its\s property the Plaintiffs have suffered the loss of the use of its property and its contents; its business operations have been disrupted; the value of its property has been reduced and the plaintiffs will suffer similar losses in the future.

WHEREFORE the Plaintiffs sue the Defendant, Florida Department of Environmental Protection for damages in excess of \$15,000 plus interest court costs and attorney fees and demands trial by jury of all issues.

This 26 day of February, 2015.

MOODY, SALZMAN & LASH, P.A.

  
**Robert A. Lash**  
FL Bar No. 308950  
500 E. University Ave.  
Gainesville, FL 32601  
(352) 373-6791 / FAX 377-2861  
Attorneys for Plaintiffs  
[Rob@moodysalzman.com](mailto:Rob@moodysalzman.com)  
[Donna@moodysalzman.com](mailto:Donna@moodysalzman.com)



AKIRA WOOD

This instrument prepared by:  
Kristie A. Williams, Land Rights Coordinator  
Real Estate Division  
Gainesville Regional Utilities  
PO Box 147117, Sta. A130  
Gainesville, FL 32614-7117

Tax Parcel No(s): 13055-000-000 thru 13055-008-000  
Section 5, Township 10 South, Range 20 East

## SITE ACCESS AGREEMENT

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between THE BAIRD CENTER ASSOCIATION, INC., a Florida corporation, whose address is 619 South Main Street, Suite K, Gainesville, FL 32601, AKIRA WOOD, INC., a Florida corporation, whose address is 619 South Main Street, Gainesville, Florida 32602, and KKT RENTALS, INC., a Florida corporation, whose address is 619 South Main Street, Suite K, Gainesville, FL 32601, (OWNERS), each as to their respective interest, and the City of Gainesville, Gainesville Regional Utilities (GRU), a municipal corporation, whose address is PO Box 147117, Gainesville, FL 32614-7117.

### WITNESSETH:

WHEREAS, Owners hold fee simple title to the following parcels (the Property) of real property located in located in the vicinity of the former Gainesville Gas Manufactured Gas Plant Site:

Units 1A, 1B, 2, 3, 4A, 4B, 5, 6, 7, and 8 of THE BAIRD CENTER a condominium recorded in OR Book 2143, page 2069 and amended by Amendment recorded in OR Book 2257, page 1293 of the public records of Alachua County, Florida.

1. The Baird Center Association, Inc. – Common Area
2. Akira Wood, Inc. – Units 1A, 2, 3, 4B, 6, and 7
3. KKT Rentals, Inc. Units 1B, 4A, and 5
4. Akira Wood, Inc. and KKT Rentals, Inc. – Unit 8

WHEREAS, in 1990 the City of Gainesville/GRU purchased certain assets and liabilities of the former Gainesville Gas Company (GGC); and

WHEREAS, in 1992 the Florida Department of Environmental Protection (FDEP) issued a Consent Order to the City of Gainesville to investigate and remediate the environmental impacts attributable to the Manufactured Gas Plant, formerly operated by GGC, and located on or in the vicinity of the Properties; and



Access Agreement

GRU/The Baird Center Association, Inc., Akira Wood, Inc., & KKT Rentals, Inc.

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WHEREAS, GRU and Environmental Consulting & Technology, Inc. (ECT) entered into an environmental remediation contract dated January 15, 2009; and

WHEREAS, all remediation contract work will be in accordance with the Remedial Action Plan Modification for Poole Roofing and Initial Remedial Action Plan for Former CSXT Parcel (ECT March 2008) and that portion of the MGP/Poole Roofing/CSX Site Remediation commonly referred to as Phase 1 on accompanying drawings Number R19 of the Source Removal Plan for Poole Roofing & Sheet Metal (Former Manufactured Gas Plant Site and Former CSX Transportation Parcel).

NOW, THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owners and GRU hereby agree as follows:

1. Owners hereby grants GRU and its employees, agents, contractors, and sub-contractors access to the Property beginning March 1, 2009, for purposes of conducting environmental remediation and related activities including, but not limited to, excavation of contaminated soil, treatment and disposal of ground water, dewatering, sheet piling existing structures, air monitoring, observation/supervision of activities in the work zone, soil and ground water sampling, photo documentation of structures, construction and operation of storm water bypass systems, demolition and reconstruction of wastewater and storm water piping, and other related activities, as detailed in the remediation Source Removal Plan drawings, attached hereto as Exhibit "A", and made a part hereof.
2. Owners hereby agree that GRU, its employees, agents, contractors, and sub-contractors, may bring onto the Property such equipment and machinery as may be reasonable necessary to conduct the aforementioned work.
3. Depot Avenue will be closed to thru traffic between Main Street and SE 3<sup>rd</sup> Street for the duration of the remedial activities. However, Owners and GRU agree that limited access to the Property will be provided for deliveries via the south driveway of the Property. Regular employee and visitor access will be limited to the Main Street driveway entrance.
4. GRU, its employees, agents, contractors, and sub-contractors may locate Air sampling equipment for ambient air monitoring on or near the southwest corner of the Property. The sampling equipment will require a temporary electric service and a temporary 10-ft by 10-ft fenced enclosure for security to be provided by GRU.
5. GRU, its employees, agents, contractors, and sub-contractors will construct a sheet pile wall along the outside of the eastern and southern sides of the

**Access Agreement**

**GRU/The Baird Center Association, Inc., Akira Wood, Inc., & KKT Rentals, Inc.**  
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southeast property corner to protect the Akira Wood building located on the Property during the soil excavation activities on neighboring properties. The sheet pile wall will be tied-back with 30 to 40 foot long helical anchors installed under the Akira Wood building. Rows of anchors spaced 8 to 10 feet apart and angled downward at 10 to 25 degrees will be installed at 8, 13, and 22 feet below grade. A total of 50 anchors will be installed, and the anchors will be abandoned in place. Upon completion of the remediation activities the sheet pile wall will be cut back approximately 2' below grade and abandoned in place.

Further, GRU and Owners agree that prior to the installation of the sheet pile wall, GRU, its employees, agents, contractors, and sub-contractors will photo document the existing condition of the structures located on the Property, including structure interiors. During the installation of the sheet piling and throughout the remediation activities, GRU will also monitor vibrations and/or ground movement in order to prevent structure damage.

6. GRU, its employees, agents, contractors, and sub-contractors will install a temporary 24-inch storm water bypass pipe along the southeast corner of the property line. In order to facilitate this, GRU, its employees, agents, contractors, and sub-contractors will temporarily remove the existing fence located around the perimeter of the property in this area and underpin the corner of the Akira Wood building foundation with grout injection to prevent damage to the building during the remediation activities.
7. GRU, its employees, agents, contractors, and sub-contractors, agree to maintain its equipment and other materials in an orderly manner while they are located on the Property and agree to restore the surface of the land as near as possible to the same condition that existed before the surface was disturbed.
8. GRU, its employees, agents, contractors, and sub-contractors shall conduct all activities on the Property in accordance with local, state, and federal regulations.
9. GRU shall, during the term hereof require all contractors, or subcontractors performing activities described in this Agreement, to maintain insurance with the following minimum limits of coverages:
  1. General Liability: \$1,000,000 per occurrence / \$2,000,00 Aggregate for bodily injury, personal injury and property damage. The general aggregate limit shall apply separately to this project/location.

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2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, \$5,000,000 if hazardous materials are to be transported.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Contractors Pollution Liability (occurrence form): \$5,000,000 per loss/\$10,000,000 aggregate for the term of the project with a minimum 5 years Completed Operations Coverage. Coverage must be provided as a separate project policy with limits dedicated solely to this project.
5. Pollution Legal Liability: \$1,000,000 per claim / \$2,000,000 annual aggregate

10. GRU hereby agrees to indemnify the Owners from claims brought against the Owners only to the extent that they are found to result from the sole negligence of GRU, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omission of third parties, independent contractors or third party agents of the City. This indemnification shall not be construed as a waiver of the City's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the City could be liable under the common law interpreting the limited waiver of sovereign immunity. An action may not be instituted on a claim against the City unless the claimant presents the claim in writing to the Risk Manager within 3 years after such claim accrues or the Risk Manager denies the claim in writing. For purposes of this paragraph, the requirement of notice to the Risk Manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues. Notwithstanding any other provisions of this paragraph, the value of this indemnification is limited to the maximum sum of \$200,000 as a result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$100,000 for any claim or judgment or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against GRU to only those damages caused by GRU's sole negligence, and shall specifically exclude any attorney's fees or costs associated herewith.

11. This Agreement shall terminate upon the completion of the work as determined by FDEP, or December 31, 2011, whichever comes first. The term of the Agreement may be extended if such extension is in writing and executed by both parties hereto or their respective successors or assigns.

**Access Agreement**

**GRU/The Baird Center Association, Inc., Akira Wood, Inc., & KKT Rentals, Inc.**

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12. If any party fails to perform any of the acts required by the terms of this Agreement, this Agreement shall be null and void, and the parties shall not be required to perform any further obligations under this Agreement. The parties do not waive any rights or remedies under common law. In the event legal action becomes necessary to enforce this agreement, the laws of Florida will control. Venue is in Alachua County, Florida.
13. This Agreement shall be binding upon the Owners, their respective heirs, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Owners and GRU have caused this Agreement to be executed on the date and year mentioned above.

**OWNERS**

**THE BAIRD CENTER ASSOCIATION,  
INC., a Florida Corporation**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Kinnon Thomas, President

\_\_\_\_\_  
Witness

**AKIRA WOOD, INC.,  
a Florida Corporation**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Glenn A. Shitama, President

\_\_\_\_\_  
Witness

**KKT RENTALS, INC.,  
a Florida Corporation**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
K. K. Thomas, President

\_\_\_\_\_  
Witness

**GRU  
City of Gainesville/  
Gainesville Regional Utilities**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Robert E. Hunzinger

Access Agreement  
GRU/The Baird Center Association, Inc., Akira Wood, Inc., & KKT Rentals, Inc.  
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General Manager for Utilities

\_\_\_\_\_  
Witness

Approved as to form and legality:

By: \_\_\_\_\_  
Raymond O. Manasco, Jr.  
Utilities Attorney

**EXHIBIT "A"**

**CONSTRUCTION PLANS TO BE ATTACHED HERE**

December 6, 2011

Hoch Shitama  
Akira Wood, Inc.  
619 South Main St.  
Gainesville, FL 32601

Subject: Akira Building Stabilization Work Proposal

Dear Hoch,

GRU, ACEPD and the FDEP have completed their review of ECT's November 15, 2011 Akira Building Stabilization proposal (copy attached) and we are prepared to proceed with the work with your concurrence.

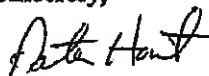
Please review the attached proposal and confirm that you are in agreement with the work proceeding as described and that you will provide the needed access to your property so that this work can be completed in a timely fashion. As described in detail in the proposal, the work involves injecting polyurethane grout through 0.5-inch diameter pipes which will be installed on approximately 4-foot grid spacing around the perimeter and within the building. As we discussed in our teleconference this morning, ECT stated that it would be possible to raise the building elevation back to its original grade at little or no additional cost, however based on your request, the work will be limited to stabilization. Please note that after the stabilization work is completed we are proposing three (3) monthly monitoring events which will also require a more limited access to your building.

After the three (3) surveying events, our consultant will prepare a letter report to document the results of the post-grout injection elevation monitoring. If no changes in the building elevations are observed during the three (3) month period, the assumption will be that no further building stabilization will be required, and the project will be considered complete. At that time, in order for us to be able to finalize the remediation contract, we will need to determine what is required to secure a release and settlement of claim from you.

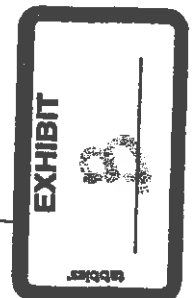
Please let me know if you have any questions or would like any additional information regarding the proposed work. If you are in agreement with us proceeding with the work as outlined in this proposal, please sign below and return to my attention.

Thank you again for your patience and cooperation throughout the remediation project.

Sincerely,



Patricia J. Hart, P.E.




## AGREEMENT

I, Hoch Shitama, am the authorized agent for the subject property and I am in agreement with allowing the work outlined in the attached ECT Akira Building Stabilization Proposal dated November 15, 2011 to proceed as described and will allow access to the property for the work and follow-up monitoring.

Signed,

  
Hoch Shitama, PRESIDENT      Date 12/14/11

PER ATTACHED LETTER AND AGREEMENT TO  
EXTEND MONITORING UP TO 6 MONTHS. 

### Attachments:

ECT Proposal dated November 15, 2011

CC: Ron Herget - GRU  
Prasad Kuchibhotla - ACEPD  
Tim Ramsey - ACEPD  
Tara Mitchell - FDEP  
Larry Danek - ECT  
Kevin Cubinski - ECT