



Bullitt County Public Schools

1040 Highway 44 East
Shepherdsville, Kentucky 40165

Phone: 502-869-8000
Fax: 502-543-3608
www.bullittschools.org

MEMO

TO: Jesse Bacon, Superintendent *JB*
FROM: Bret Highley *BH*
DATE: November 12, 2020
RE: Special Inspection Services: New 800 Student Elementary School BG #20-142

At this time, I am asking the Board to accept the proposal for Special Inspection Services from ECS Southeast LLP in the amount of **\$131,710.43**. The proposal submitted by ECS Southeast LLP includes a 5% contingency above the assumed number of site visits listed in their proposal – with the 5% contingency not included, they provided the second lowest proposal sum. The fee provided is an assumed amount; however, billing to the District will be based on actual time expended and material testing that is required during construction.

Three proposals were sent out regarding the Special Inspection Services for the New 800 Student Elementary project:

Company	Price/Proposal
ECS Southeast LLP	\$125,438.50 (estimated lump sum fee) \$131,710.43 (w/5% Contingency)
L.E. Gregg Associates	\$128,082.00 (cost estimate total)
Geotechnology, Inc.	\$57,797.00 (estimated total)

Board Attorney, Eric Farris, has reviewed the submitted proposal. I recommend the Board approve this request. If you have any questions, please call me at 502-921-3659.

Attachment:

- Recommendation Letter: Cate Ward, Studio Kremer Architects
- ECS Southeast Proposal with agreement ready to sign

Equal Education and Employment Institution

*Umm
Beyton*

November 10, 2020



Special Inspections Services Recommendation

TO: **Bullitt County Schools**
Bret Highley, Construction Manager
1040 Highway 44 East
Shepherdsville, KY 40165

REFERENCE: Special Inspection Services for:
New 800-Student Elementary School
New Construction | Mt Washington, Kentucky
BG# 20-142 | ska# 2019-50

Mr. Highley:

We are recommending **ECS Southeast, LLP** to provide special inspection services for the New 800-Student Elementary School in Mt Washington. Their proposed fee includes a 5% contingency above the assumed number of site visits listed in their proposal – with the 5% contingency not included, they provided the second lowest proposal sum. The fee provided is an assumed amount –billing to the District will be based on actual time expended and material testing that is required during construction.

A comparison chart of the described services listed in each proposal was created for reference due to the large cost difference in Geotechnology, Inc.'s proposal relative to the others received. The attached comparison chart shows that Geotechnology, Inc.'s proposal provides fewer site visits. We are particularly concerned that only one (1) site visit is noted for soil testing. The geotechnical investigation report noted the condition of soils on the site would require a qualified soils engineer to be on site on a regular basis early in construction to review site conditions and make recommendations if unsuitable soil conditions are encountered. We'd anticipate a fee above the number noted in the lowest proposal which would presumably increase the proposed fee to be more in line with the others received. The proposal from Geotechnology, Inc. does not make specific mentions of code required materials testing as described in the other proposals which makes the Design Team concerned the project scope was misunderstood and their fee would increase as a result.

While ECS Southeast's assumed fee for services is not the lowest one received, the Design Team's shared experience with the analysis provided during construction on past projects has proven ECS's services to be the most comprehensive. ECS Southeast's prior knowledge of subsurface conditions through their geotechnical investigation at this site will provide further insight into how unsuitable soil conditions should be addressed to help keep the project on schedule and in line with the design assumptions included in the project scope to address unsuitable soils.

studio kremer architects

1231 S Shelby St, Louisville, KY 40203

TEL 502.499.1100 FAX 502.499.1101

Three (3) proposals were provided by the following companies:

- | | |
|----------------------------|--|
| 1.) ECS Southeast, LLP: | \$125,438.50 (Estimated Lump Sum Fee)
(w 5% Contingency included \$131,710.43.) |
| 2.) L.E. Gregg Associates: | \$128,082.00 (Cost Estimate Total) |
| 3.) Geotechnology, Inc.: | \$57,797.00 (Estimated Total) |

If you have any questions or comments, please do not hesitate to me.

Sincerely,
Studio Kremer Architects



Cate Noble Ward | AIA
Associate

enclosures –

- a. Special Inspections Services Proposal Comparison Chart
- b. ECS Southeast, LLP's Proposal for Special Inspection Services
- c. LE Gregg Associates' Proposal for Special Inspection Services
- d. Geotechnology, Inc.'s Proposal for Special Inspection Services

Special Inspections Services Proposal Comparison Chart

New 800-Student Elementary School

BG# 20-142 | ska# 2019-50

	ECS Southeast, LLP:	L.E. Gregg Associates	Geotechnology, Inc.
Soil Testing & Observation	38	<i>Service Listed but not quantified in Proposal. See time and working days described below.</i>	1
Footings & Foundations	18		40
Reinforced Concrete	17		52
Masonry	35		60
ICF Walls	70		<i>No mention, assumed with Masonry #.</i>
Structural Steel	13		12
Total # of Site Visits:	191	<i>Not quantified</i>	165
Working Days	264	266	<i>Not quantified</i>
Technical Hours	<i>Not quantified</i>	1,244	<i>Not quantified</i>
Prof. Service Hours	<i>Not quantified</i>	72	<i>Not quantified</i>
Material Testing:			
Concrete Cylinder Cores	95	132	None Listed.
Proposal Cost (Assumed):	\$125,438.50	\$128,082.00	\$57,797.00



ECS Southeast, LLP

Proposal for Special Inspections and Construction Materials Testing Services

New BCPS Elementary School
200 Golden Wing Road
Mount Washington, Kentucky 40047
ECS Proposal Number 61:P2130

November 10, 2020





ECS SOUTHEAST, LLP

Geotechnical • Construction Materials • Environmental • Facilities

"Setting the Standard for Service"

November 10, 2020

Mr. Bret Highley
Bullitt County Schools
1040 KY-44
Shepherdsville, KY 40165

Reference: Proposal for Special Inspections and Construction Materials Testing Services
BCPS New Elementary School
Shepherdsville, KY 40165
ECS Proposal Number 61:P2130

Dear Mr. Highley:

ECS Southeast, LLP (ECS) appreciates this opportunity and is pleased to present this proposal for Construction Materials Testing (CMT) and Special Inspection Services for the above referenced project. We have formulated a scope of service based on our understanding of the project, our experience performing similar services throughout the region, and our review of the project documents provided to us.

Our 30 years of experience in the area helps us provide efficient, cost-effective CMT, SI, and engineering consulting services. Additionally, our automated Field Reporting and Electronic Distribution (FRED) system provides efficient reporting of our services. Our FRED system is a completely digital and efficient method of information transmittal. Using a hand-held tablet, our Field Technicians write their reports on site and transmit them to our office. The Project Manager/Principal Engineer then reviews the report before it is automatically sent to you via email, within hours of completion. Everyday construction problems in the field can be resolved quickly by the project engineer, thus saving the client time and money.

Our Louisville branch is staffed with professional engineers, geologists, project managers, special inspectors, and laboratory and field technicians. Additionally, we are fully accredited by AMRL in accordance with ASTM E329 in materials testing and Special Inspections.

We feel certain that ECS can offer unparalleled service and value to your project. If you have any questions or comments regarding our proposal, please contact us. We look forward to hearing from you.

Respectfully,

ECS SOUTHEAST, LLP

Liz Newcomb, PE

Geotechnical Department Manager

Jerry Vandeveld, PE

Principal Engineer, VP

PROJECT UNDERSTANDING

The subject project will consist of the construction of a new-800 student, two- to three-story elementary school building. The structure will be supported typical shallow foundations, with an Insulating Concrete Form (ICF) wall shell, interior load bearing walls and stairwells of Concrete Masonry Unit (CMU) construction, steel joists, steel decking, elevated concrete slabs and concrete slab-on-grade. A new storm shelter will be constructed as part of the new elementary school, which will consist of similar construction materials.

SCOPE OF SERVICES

Based on our review of the structural drawings and civil drawings provided by Studio Kremer Architects, dated October 2020, discussions with the project team, and other related projects, we anticipate providing the following construction materials testing services:

Soils (1705.6):

1. Perform observations and Dynamic Cone Penetrometer testing to confirm materials below shallow foundations are adequate to support the design bearing capacity.
2. Confirm excavations are extended to proper depth and have reached proper materials
3. Perform classification and testing of compacted fill materials.
4. Perform testing and observations during placement and compaction of the fill material to verify lift thickness, material type, and compaction efforts comply with the approved report.
5. Observe conditions of excavation subgrades prior to foundation preparation or fill placement, including proofrolling and other testing of subgrades.
6. Perform appropriate laboratory testing on materials proposed for use as controlled fill in general accordance with project specifications. Testing may include:
 - a. Grain Size Distribution, ASTM D-422
 - b. Liquid and Plastic (Atterberg) Limits, ASTM D-4318
 - c. Standard Proctor Moisture Density Relationships

Structural Steel (1705.2)

Special Inspections and nondestructive testing of structural steel elements shall be in accordance with the quality assurance inspection requirements of AISC 360, including (but not limited to) the following:

1. Erector and Fabricator Quality Control
 - a. Confirm that the erector is in compliance with Chapter N, Section N2 of AISC 360 and provides a field Quality Control Inspector
 - b. Confirm field welder qualification records for completeness and continuity.
 - c. Fabricator Quality Control shall be per section 1704.2.5
2. Structural Steel Welded Connections:
 - a. Confirm compliance with Welding Procedure Specifications (WPS)
 - b. Perform continuous or periodic inspections as necessary for complete and partial penetration groove welds, multi-pass fillet welds, and single pass fillet welds $\leq 5/16"$

3. **Structural Steel Bolted Connections:**
 - a. Observe that identification markings for bolts, nuts, and washers conform to ASTM standards specified in the approved construction documents.
 - b. Observe bearing type connections.
 - c. Observe snug tight connections for faying surface interaction and bolt tightening.
 - d. Observe pre-tensioned connections for faying surface interaction and pre-tensioning methods (turn of nut, tension controlled, etc.)
 - e. Observe slip-critical connections for faying surface preparation, faying surface interaction and pre-tensioning methods (turn of nut, tension controlled, etc.)
 - f. Observe steel frame joint details for compliance with approved construction documents in regards to details such as bracing and stiffening, member locations, and application of joint details at each connection.
4. Metal deck inspections shall be performed in accordance with SDI QA Inspection requirements (1705.2.2):
 - a. Verify compliance of materials and accessories in accordance with project documents, mill test records, and manufacturer certifications
 - b. Verify compliance with Welding Procedure Specifications (WPS)
 - c. Verify size, location, and visual acceptability of welded connections
 - d. Verify type, location, and acceptability of mechanical fastening
5. Open web steel joists (1705.2.3 and SJI guidance):
 - a. Verify end connections for appropriate fastening or welding (as applicable)
 - b. Verify installation of bridging for compliance with installation documents.
6. **Shear Reinforcement:**
 - a. Visually observe shear studs for full weld flash at connection point.
 - b. Perform bend testing of shear studs in accordance with project documents and specifications, but not less than 5% of studs.
7. **Material documentation of structural steel:**
 - a. Observe identification markings to conform to ASTM standards specified in the approved construction documents.
 - b. Observe manufacturer's certified mill test reports.

Reinforced Concrete:

Cast-in-place Concrete (Including ICF):

1. Observe placement of reinforcing steel for compliance with the project plans and specifications prior to the placement of concrete.
2. Observe the installation of anchor bolts in concrete prior to and during placement of concrete.
3. Observe the installation of post-installed anchors in hardened concrete.
4. Observe formwork for shape, location, and dimensions of concrete members being formed.
5. Document the use of the required design concrete mix.

6. Perform physical property tests including slump, air content, and concrete temperature at the time fresh concrete is sampled and obtain samples for strength testing.
7. Observe concrete placement for proper application techniques.
8. Observe maintenance of specified curing temperature and techniques.
9. Document that the Contractor has provided proper storage and curing facilities for the first 24 hours after casting of cylinders.

Structural Masonry:

1. As masonry construction begins, the following shall be observed for compliance:
 - a. Location of reinforcement and connectors.
2. We will observe:
 - a. Size and location of structural elements.
 - b. Type, size and location of anchors, including other details of anchorage of masonry to structural members, frames or other construction.
 - c. Specified size, grade and type of reinforcement.
 - d. Protection of masonry during cold weather (temperature below 40 degrees Fahrenheit) or hot weather (temperature above 90 degrees Fahrenheit).
3. Prior to grouting, the following shall be observed to document compliance:
 - a. Grout space is clean.
4. Placement of reinforcement and connectors and pre-stressing tendons and anchorage.
5. Proportions of site-prepared grout and pre-stressing grout for bonded tendons.
6. Grout placement shall be observed to document compliance with code and construction document provisions.
7. Preparation of required grout specimens, mortar specimens and/or prisms shall be observed.

ESTIMATED FEE

Our estimated fee for providing the services mentioned above will be on the order of **\$126,000**. A spreadsheet summarizing our anticipated scope of services and durations is attached for your review. During the preparation of this proposal, we reviewed the structural drawings and civil drawings provided by Studio Kremer Architects, dated October 2020.

We have based this estimate on an assumed duration of 264 site visits on-call, part time testing services and professional and administrative support.

On-Site Progress Meetings- 3 visits by the Project Manager

Observe Proofrolling Activities (Subgrades, Gravel Bases, etc.) – 13 visits

Observation of Grade Raising Fill Placement (up to 8 feet of fill in portions of the site) – 20 visits

Observation of Gravel Base Placement – 5 visits

Storm Shelter Foundations (DCPs, Reinforcing Steel and Concrete Testing) – 3 visits

Storm Shelter Slab on Grade and Elevated Floor Slab (Reinforcing Steel and Concrete Testing) – 2 visits

Storm Shelter ICF Walls (Reinforcing Steel and Concrete Testing) – 10 visits

Storm Shelter Masonry Walls (Reinforcing Steel and Grout Testing) – 5 visits

Storm Shelter Structural Steel Observations (Steel Joists and Decking) – 3 visits

Storm Shelter Concrete Cylinder or Grout Prism Pick-Up – 15 Visits

School Building Foundations (DCPs, Reinforcing Steel and Concrete Testing) – 15 visits

School Building Slab on Grade and Elevated Floor Slab (Reinforcing Steel and Concrete Testing) – 15 visits

School Building ICF Walls (Reinforcing Steel and Concrete Testing) – 60 visits

School Building Masonry Walls (Reinforcing Steel and Grout Testing) – 30 visits

School Building Structural Steel Observations (Steel Joists and Decking) – 10 visits

School Building Concrete Cylinder or Grout Prism Pick-Up – 80 Visits (these would be done if other inspections are not scheduled – typically done within a 48 hr window timeframe [requirement of ASTM C-31] of the specimens being made in the field)

These services are not full time, on-site observations unless otherwise noted herein, are required by project documents or building code, or shown as such on the attached cost estimate. Any services in addition to those outlined in this proposal will be billed in accordance with the unit rate schedule provided. **Should a construction schedule be provided, we will be happy to revise our estimate accordingly.**

Our actual fee may be greater or less than the estimate based upon actual quantities calculated using the enclosed schedule of rates. Additional site visits for specific tasks of retesting failed tests or technician hours in excess of 8 hours per day have not been included in our fee estimate. It is our understanding that the required services have been included in our unit price list and accounted for in our fee estimate. Should supplemental services be deemed necessary at a later date, they will be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance. The unit prices listed herein shall remain as stated throughout the project.

The services described above will be rendered portal-to-portal from our office, with a mileage charge of \$0.75 per mile. Our unit rates are based on a normal 8-hour workday, Monday through Friday. Overtime beyond 40 hours/week, outside of the hours of 7:30 am and 5:30 pm, and on Saturday, Sunday and Holidays will be invoiced at a rate of 1.5 times the normal hourly rate indicated above.

UNDERSTANDING CONSTRUCTION MATERIALS TESTING

Construction Materials Testing (CMT) is performed to help provide the project's contractors, designers, owners, and local code officials some indication of the level of compliance obtained by the installing contractors with the project specification. These services are provided at intervals defined by the project specifications and/or by the applicable building code. Test locations for most materials (i.e. soils, concrete, fireproofing, etc.) are generally based upon a percentage or area; as such not all materials incorporated into a construction project are tested or observed.

The greater the testing frequency, the higher the confidence level that the test results are representative of other untested areas, however, no amount of testing can assure 100% compliance. Testing and observations provided by ECS do not relieve the installing contractors from their obligation to install all materials in accordance with the applicable project plans and specifications. ECS makes a reasonable effort to test in accordance with the applicable project requirements and identify areas of materials that may not comply with the project specifications. However, due to the periodic and random nature of our testing, we cannot guarantee that all materials have been installed in accordance with the specifications.

The responsibility to correct or remediate non-complying conditions, even non-complying conditions discovered after testing or during subsequent phases of construction remains solely with the installing contractors.

REPORTING, BILLING, COMMUNICATION, AND CONTRACT CONDITIONS

You will be issued daily field reports and laboratory test reports as part of our service. Because our reporting systems are fully computerized, we are generally able to submit field reports and laboratory results within 48 hours of testing. If deficiencies in procedures or materials are recognized in the field, the general contractor will be verbally notified as soon as possible so that the problem may be resolved prior to the performance of additional work. Deficient laboratory results are reported by e-mail to the client, structural engineer, and general contractor by the Project Engineer. Copies of reports will be forwarded to each party by e-mail as requested by the client, at no extra charge, as part of our service. Upon request, ECS will provide a separate invoice for services provided outside the scope of services for the estimated cost.

All scheduling requests must be made by 3:00pm the day prior to service so that the proper personnel may be scheduled for the required task. The appropriate contractor or owner representative should contact our project manager to provide the appropriate level of staffing to meet the project requirements. Each scheduling request will be assigned a work order number so that the scheduled testing is documented.

Invoices will be issued on a monthly basis and will provide a week by week breakdown of billing units, unless modified by request of the client. They are normally processed on or around the 10th of each month and represent costs incurred during the previous month. These invoices will also display a monthly cumulative summary of project costs to date. This monthly summary will serve as a means of monitoring job expenses as they relate to job progress. We request that payment be rendered within 30 days of receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days. ECS also reserves the right to withhold final certifications until outstanding balances have been paid in full.

SUMMARY AND ACCEPTANCE

Attached to this letter, and an integral part of our proposal, are our "General Conditions of Service". These conditions represent the current recommendations of the ASFE Professional Firms Practicing in the GeoSciences, the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing and returning the enclosed copy to us. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

ECS SOUTHEAST, LLP
FEE SCHEDULE PROPOSAL 61:P2130
CONSTRUCTION MATERIALS TESTING (CMT)

Field Services	UNIT RATE
1. Engineering Technician.....	\$ 50.00/hour
2. Senior Engineering Technician	\$ 60.00/hour
3. Specialty Technician	
a. Firestopping.....	\$ 80.00/hour
b. Structural Steel/CWI.....	\$ 95.00/hour
c. Ultrasonic Tech/Senior CWI	\$ 105.00/hour

Professional & Administrative Services

1. Staff Level	\$ 85.00/hour
2. Project Level	\$ 130.00/hour
3. Senior Project Level	\$ 175.00/hour
4. Principal Level.....	\$ 250.00/hour
5. Staff Professional Level	\$ 85.00/hour
6. Administrative Level	\$ 50.00/hour

Laboratory Services/Miscellaneous

1. Compressive Strength of Concrete Cylinders (ASTM C-39), made by ECS.....	\$ 12.50/each
2. Compressive Strength of Grout Prisms (ASTM C-1019), made by ECS.....	\$ 15.00/each
3. Standard Proctor Moisture Density Relationships (ASTM D-698).....	\$ 130.00/each
4. Atterberg Limits Tests (ASTM D-4318)	\$ 75.00/each
5. Washed Sieve Analyses (ASTM D-1140).....	\$ 75.00/each
6. Natural Moisture Contents (ASTM D-2216)	\$ 10.00/each
7. Equipment Maintenance Fees	
a. General Equipment	\$ 25.00/day
b. Nuclear Gauge	\$ 75.00/day
c. Floor Flatness	\$ 150.00/day
8. Mileage.....	\$ 0.75/mile
9. Summary Letter	\$ 400.00/each

The services described above will be rendered portal-to-portal from our office, with a mileage charge of \$0.75 per mile. Our unit rates are based on a normal 8 hour work day, Monday through Friday. Overtime beyond 8 hours/day, outside of the hours of 7:30 am and 5:30 pm, and on Saturday, Sunday and Holidays will be invoiced at a rate of 1.5 times the normal hourly rate indicated above. Scheduling should occur prior to 3:00 p.m. on the business day before services are required.



**PROPOSAL ACCEPTANCE FORM
ECS SOUTHEAST, LLP**

Project Name: New BCPS Elementary School
Location: Mt. Washington, KY

Please complete and return this Proposal Acceptance Form to ECS as shown at the bottom of this form. By signing and returning this form, you are providing us with authorization to proceed, providing us permission to enter the site, and making this proposal the agreement between us. Your signature also indicates that you have read this document and the general conditions of service in its entirety and agree to pay for these services.

CLIENT AND BILLING INFORMATION

Name of Client: Bullitt County Schools
Contact Person: Bret Highley
Telephone No. 502-921-3659
E-mail: bret.highley@bullitt.kyschools.us

Responsible for Payment
Contact Name: Lisa Lewis, Director of Finance
Company Name: Bullitt County Public Schools
Address 1040 Highway 44 East
Address _____
City, State, Zip Shepherdsville, KY 40165
Telephone No.: 502-869-8003
Fax No: 502-543-3608
E-mail Address: lisa.lewis@bullitt.kyschools.us

Approval of Invoice (if different)
Bret Highley, Construction Inspector
Same

502-921-3659

bret.highley@bullitt.kyschools.us

The reports are normally e-mailed directly to client. If you require copies to others, please provide their names, e-mail addresses and fax numbers below.

Name	e-mail Address	Phone Number	Fax Number
Cate Ward SKA	cate@studiokremer.com	502-499-1100x2583	502-499-1101
_____	_____	_____	_____
_____	_____	_____	_____

Special Instructions: Please submit monthly invoices. Once reviewed by Construction Inspector, the invoice will be processed for payment in a timely manner.

Client Signature: × _____ Date: November 23, 2020

ESTIMATED FEE
New BCPS Elementary School - CMT/SI
ECS Southeast, LLP Proposal # 61:2130

CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTIONS

	HRS/TRIP	TRIPS	RATE	TOTAL
<u>EARTHWORK (ENTIRE SITE)</u>				
On-Site Meeting	3	1	\$130.00	\$390.00
Proofrolling After Topsoil Removal	3	2	\$60.00	\$360.00
Fill Placement	9	20	\$60.00	\$10,800.00
Proofroll Prior to Gravel Placement (Pavements)	2	6	\$60.00	\$720.00
Proofroll of Gravel Base (Pavements)	2	6	\$60.00	\$720.00
<u>STORM SHELTER</u>				
On-Site Meeting	3	1	\$130.00	\$390.00
Building Pad Proofroll	2	1	\$60.00	\$120.00
Gravel Base Proofroll/Densities	2	1	\$60.00	\$120.00
Foundations - DCP's Resteel and Concrete	5	3	\$60.00	\$900.00
Floor Slab Placement (Slab on Grade and 1 Elevated Slab)	8	2	\$50.00	\$800.00
ICF Walls (2 stories - approximately 30 feet tall)	6	10	\$50.00	\$3,000.00
Masonry Walls	5	5	\$50.00	\$1,250.00
Structural Steel	6	3	\$95.00	\$1,710.00
Cylinder/Grout Pickups	2	15	\$50.00	\$1,500.00
<u>SCHOOL BUILDING</u>				
On-Site Meeting	3	1	\$130.00	\$390.00
Building Pad Proofroll	2	6	\$60.00	\$720.00
Gravel Base Proofroll	2	6	\$60.00	\$720.00
Foundations - DCP's Resteel and Concrete	8	15	\$60.00	\$7,200.00
Floor Slab Placement (Slab on Grade and 1-2 Elevated Slabs)	8	15	\$50.00	\$6,000.00
ICF Walls (2 stories - approximately 30 feet tall)	6	60	\$50.00	\$18,000.00
Masonry Walls	5	30	\$50.00	\$7,500.00
Structural Steel	6	10	\$95.00	\$5,700.00
Cylinder/Grout Pickups	2	80	\$50.00	\$8,000.00
			SUBTOTAL	\$64,020.00

ENGINEERING & SUPPORT

	HRS/RPT	REPORTS	RATE	TOTAL
Principal Engineer	0.25	299	\$250.00	\$18,687.50
Project Manager	0.50	299	\$130.00	\$19,435.00
			SUBTOTAL	\$38,122.50

MISCELLANEOUS SERVICES

	UNITS	RATE	TOTAL
Trip Charges (42 miles @ \$0.75/mile)	299	\$31.50	\$9,418.50
Concrete Cylinders	695	\$12.50	\$8,687.50
Masonry Grout Prisms	140	\$15.00	\$2,100.00
Proctor (with Atterburg Limits)	3	\$205.00	\$615.00
DCP Rental Fee	18	\$25.00	\$450.00
Nuclear Guage Rental	27	\$75.00	\$2,025.00
		SUBTOTAL	\$23,296.00

NOTES:

1. Each trip includes 1.0 hour for travel time from ECS's office to the site.

TOTAL **\$125,438.50**

TOTAL W/ 5% CONTINGENCY **\$131,710.43**

ECS Southeast, LLP

TERMS AND CONDITIONS OF SERVICE

The professional services ("Services") to be provided by ECS Southeast, LLC ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing and shall form the Agreement between ECS and CLIENT.

1.0 INDEPENDENT CONSULTANT STATUS - ECS shall serve as an independent professional consultant to CLIENT for Services on the Project and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

2.0 SCOPE OF SERVICES - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S agents, contractors and consultants ("Contractors"). CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

3.0 STANDARD OF CARE

3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guarantee of any nature whatsoever.

3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable laws or regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

4.0 CLIENT DISCLOSURES

4.1 Where the Services requires ECS to penetrate a surface, CLIENT shall furnish and/or shall direct CLIENT'S or CLIENT'S Contractors to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

4.3 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees or fee schedule to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

5.0 INFORMATION PROVIDED BY OTHERS - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S Contractors, including such information that becomes incorporated into ECS documents.

6.0 CONCEALED RISKS - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. CLIENT agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' additional services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES

7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the site for the performance of Services. CLIENT hereby grants ECS and its agents, subcontractors and/or subconsultants ("Subconsultants"), the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS and its Subconsultants harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment will cause damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' Subconsultant's request for utility marking services made in accordance with local industry standards.

9.0 SAMPLES

9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the first issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.

9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing by-products in accordance with applicable laws and regulations.

10.0 ENVIRONMENTAL RISKS

10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this Agreement to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with its Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT and its Contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 Without ECS' prior written consent, CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or its Subconsultants. CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or Damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its Contractors from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, fall protection, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any of CLIENT'S Contractors or any of their subcontractors.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete work being installed by CLIENT'S Contractors. If CLIENT elects to retain ECS on a part-time or on-call basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risk that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing in exchange for CLIENT'S receipt of an immediate cost savings. Unless the CLIENT can show that ECS' errors or omissions are contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part-time or on-call basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all Damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from work that was monitored or tested by ECS on a part-time or on-call basis.

- 14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the professional fees section of the Proposal. Any estimate of professional fees stated shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.

- 15.2 CLIENT agrees that all professional fees and other unit rates may be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.

- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the scope of Services, professional fees, and time schedule.

- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this Agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the professional Fees. Invoices are due and payable upon receipt.

- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice date. CLIENT agrees to pay the undisputed amount of such invoice promptly.

- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.

- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.

- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT and CLIENT'S Contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to client-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT'S personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.

- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

- 17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain workers compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.

- 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.

- 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$50,000, or the total fee for the services rendered, whichever is greater.

- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this Agreement or the services provided as a result of the Proposal be limited to \$500,000.

19.0 INDEMNIFICATION

- 19.1 Subject to Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)

- 19.2 To the fullest extent permitted by law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines,

penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ("Damages") caused in whole or in part by the acts, errors, or omissions of the CLIENT or CLIENT's employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.

19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**

19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**

19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**

20.0 CONSEQUENTIAL DAMAGES

20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

21.1 All claims for damages related to the Services provided under this Agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS.

21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

22.0 **THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the Agreement. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen calendar (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier

contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.

23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

25.1 CLIENT or ECS may terminate this Agreement for breach, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 **TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this Agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 **ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 **SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 **SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the Agreement.

30.0 TITLES: ENTIRE AGREEMENT

30.1 The titles used herein are for general reference only and are not part of the Terms.

30.2 These Terms together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS ("Agreement"). CLIENT acknowledges that all prior understandings and negotiations are superseded by this Agreement.

30.3 CLIENT and ECS agree that subsequent modifications to the Agreement shall not be binding unless made in writing and signed by authorized representatives of both parties.

30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.

30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT's acceptance of this Proposal and these Terms and their agreement to be fully bound to them. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.