

THIS STANDARD SERVICES AGREEMENT (hereinafter “Agreement”) is entered into this _____ day of June, 2024 by and between, [Pace Analytical Services, LLC](#), a Minnesota limited liability company with its principal business offices located at [2665 Long Lake Road Suite 300, Roseville, MN 55113](#) (the “Contractor”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Contractor may collectively be referred to as “Parties” hereinafter.

WITNESSETH:

The Town and the Contractor, for the consideration stated herein, agree as follows:

1. SCOPE OF SERVICES.

The Contractor agrees to perform for the Town the following services: [Services as detailed in the attached Quotes # 00162776, # 00162778, and # 00162779, dated 5/30/2024. The services include: laboratory analysis for Haloacetic Acids \(HAA5\) \(Disinfection Byproducts\), Metal Analysis for Lead and Copper \(water\), Mercury \(Hg\), Low level \(water\), Total Trihalomethanes \(TTHMs\) \(Disinfection Byproducts\), Sample Disposal \(per sample\), and Environmental Impact Fee \(Per Invoice\).](#)

In the event of a conflict between the terms of the attached Scope of Services and this Agreement, this Agreement shall control.

2. SPECIFICATIONS.

Contractor shall provide services in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina. Upon request by the Town, Contractor will provide plans and specifications prior to engaging in any services under this Agreement. Contractor hereby acknowledges that it is fully licensed to perform the work contemplated by this Agreement. In the event of a conflict between any provided plans and specifications and this Agreement, this Agreement shall control.

3. TIME OF COMMENCEMENT AND COMPLETION.

Contractor shall commence the work required in this Agreement no more than 30 days after the date of execution of this Agreement, and the Contractor shall complete entire work no later than 6/30/2027. If a Scope of Services is provided Contractor shall also comply with all timelines and deadlines documented in the Scope of Services. If Contractor has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Agreement must be agreed to in writing by the Town and the Contractor.

4. CONSIDERATION AND PAYMENT OF SERVICES.

In consideration of the above services, the Town will pay the Contractor a not to exceed amount of \$ [\\$8,340.00 for FY25, \\$11,300.00 for FY26, and \\$8,600.00 for FY27](#) to be paid according to the following schedule: [30 days from receipt of invoice which is undisputed.](#) Town has the right to require the Contractor to produce

for inspection all of Contractor's records and charges to verify the accuracy of all invoices. Town shall pay Contractor's invoices at times set forth above unless a bona fide dispute exists between Town and Contractor concerning the accuracy of said invoice or the services covered thereby.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY.

To the extent permitted by law, the Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof only to the extent **resulting from intentional misconduct or negligent performance by Contractor of this Agreement or the Services.**

Aggregate liability by Contractor shall not exceed the actual fees paid to Contractor by the Town during the 12 months preceding the claim giving rise to the liability. All claims, including those for negligence, shall be deemed waived unless suit thereon is filed within the period of limitations set forth in North Carolina law. Under no circumstances, whether arising in contract, tort (including negligence), or otherwise, shall the Contractor be responsible for loss of use, loss of profits, or for any special, indirect, incidental or consequential damages occasioned by the Services performed or by application or use of the reports prepared.

6. APPLICABILITY OF LAWS AND REGULATIONS.

The Contractor shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this Agreement and any attached specifications.

This Agreement shall be governed by the laws of the State of North Carolina. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Wake County, North Carolina, or the United States District Court sitting in Wake County, North Carolina, and it is agreed by the Parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

7. E-VERIFY COMPLIANCE.

The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Contractor shall require all of the Contractor's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

8. ANTI-HUMAN TRAFFICKING.

The Contractor warrants and agrees that no labor supplied by the Contractor or the Contractor's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

9. QUALITY AND WORKMANSHIP.

All work shall be performed to the satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided.

10. INSURANCE.

The Contractor shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance. Additionally, the contractor shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000. The Contractor shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company. All required certificates of insurance and endorsements are attached and considered part of this document. Notwithstanding the foregoing, the requirement of Contractor to have sufficient insurance shall not constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

11. PRE-PROJECT SAFETY REVIEW MEETING.

When specified by the Safety and Risk Manager, the Contractor shall attend a pre-project safety review meeting with the contacting Department Head and Supervisors and Safety and Risk Manager prior to the start of work.

12. DEFAULT.

In the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Contractor upon seven (7) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this Agreement.

13. TERMINATION FOR CONVENIENCE.

Both parties shall have the right to terminate this Agreement for its convenience upon thirty (30) days written notice to the other Party. The Contractor shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Contractor for all services satisfactorily performed. Upon any termination Contractor shall cooperate in returning all data or information supplied by the Town, except in the case of a disputed invoice.

14. NOTICE.

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CONTRACTOR:

Pace Analytical Services, LLC
2665 Long Lake Road, Suite 300
Roseville, MN 55113
Phone: 612.607.6400
Fax: 612/607.6344
Haynes.campbell@pacelabs.com

TO TOWN: Town of Apex

Attention: Jessica Sloan
PO Box 250
Apex, NC 27502
Jessica.Sloan@apexnc.org

15. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Contractor nor Town, having taken commercially reasonable precautions, shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by natural disaster, fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disobedience, or other event reasonably outside of the parties' control. Due to the ever-changing circumstances surrounding the COVID-19 pandemic, situations may arise during the performance of this Agreement that affect availability of resources and staff of Contractor or the Town. There could be changes in anticipated performance times and service costs. Contractor will exercise reasonable efforts to overcome the challenges presented by current circumstances. In the event of changes in performance times or service costs caused by the COVID-19 pandemic the Town reserves the right to terminate this Agreement in accordance with its terms. The Parties agree that they shall not be liable to each other for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 pandemic.

16. NONWAIVER FOR BREACH.

No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

17. CONSTRUCTION.

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

18. NO REPRESENTATIONS.

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

19. SEVERABILITY.

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

20. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

21. MODIFICATION.

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

22. BINDING EFFECT.

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

23. ASSIGNMENT.

Contractor shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Contractor in the performance of services rendered.

Neither this Agreement nor the work orders issued under this Agreement may be assigned in whole or in part by either Party or by operation of law – except that, without securing such prior consent, either Party shall have the right to assign this Agreement to any successor of such Party by way of merger or consolidation or the acquisition of substantially all of the assets of such Party; provided, however, that such successor shall expressly assume all of the obligations of such assigning Party under this Agreement

24. INDEPENDENT CONTRACTOR.

Contractor is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Contractor shall be wholly responsible for the methods, means and techniques of performance.

25. NON-APPROPRIATION.

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town are from appropriations and monies from the Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

26. IRAN DIVESTMENT ACT CERTIFICATION.

N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement the Contractor hereby certifies that the Contractor is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Contractor will not utilize any subcontractors found on the Final Divestment List.

27. NONDISCRIMINATION.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Contractor hereby warrants and agrees that Contractor will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement “protected class” includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

28. ELECTRONIC SIGNATURE.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with the Town’s Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this ____ day of _____, 2024.

Contractor

Name: Jean Anne Neal
Name of Contractor (type or print)

By: Jean Anne Neal
(Signature)

Title: Vice President of Sales

Attest:

(Secretary, if a corporation)

Town of Apex

Randal E. Vosburg, Town Manager

Attest:

Allen L. Coleman, CMC, NCCCC
Town Clerk
This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Antwan Morrison, Finance Director



Quote Prepared for:

Town of Apex	Jessica Sloan
PO Box250	(919) 372-7478
Apex, NC 27502	jessica.sloan@apexnc.org

Pace® Contact Information

Account Executive	Pace Project Manager
Haynes Campbell	
haynes.campbell@pacelabs.com	

Project Information

Quote Name	00162776 - Apex_FY24/25_DWPricing_05.29.24	Created Date	5/30/2024
Quote Number	00162776	Expiration Date	6/30/2025
Standard TAT:	10 Business Days	Report Level	Level 2
Project Location	NC	EDD Requirements:	NA
		Certification	NC
		Requirements	

Payment Information

Customer Accounts	Kimberly Nobles	Is P.O. Required for No
Payable Contact:		Payment?
Customer Accounts	kimberly.nobles@apexnc.org	
Payable Email:		
Credit Application	Credit Approved	
Approved?		

Minimum Laboratory Fee (per work order)

Waived

Quote Details

Quantity	Method	Product	Line Item Description	Sales Price	Sub-Total	Total-Price
1.00	EPA 552.3	Haloacetic Acids (HAA5) (Disinfection Byproducts)		\$140.00	\$140.00	\$140.00
1.00	EPA 200.8 (ICP/MS)	Metal Analysis (2 Metals) (water)	Lead & Copper - Includes \$5 metals digestion fee	\$35.00	\$35.00	\$35.00
1.00	EPA 1631	Mercury (Hg), Low Level (water)	\$85 for sample + \$85 for blank	\$85.00	\$85.00	\$85.00
1.00	EPA 524.2	Total Trihalomethanes (TTHMs) (Disinfection Byproducts)		\$90.00	\$90.00	\$90.00
1.00		Sample Disposal (per sample)	WAIVED	\$0.00	\$0.00	\$0.00
1.00		Environmental Impact Fee (Per Invoice)		\$15.00	\$15.00	\$15.00



Estimated Grand-Total

\$365.00

[New to Pace? Complete your Credit Application here!](#)

Additional Pricing Considerations:

If you have specific questions about any conditions noted below, please contact your Pace Analytical Representative.

- Unless accepted, signed and returned, or otherwise noted above, proposal expires 60 days from Created Date above.
- Quoted prices include standard Pace Analytical QA/QC, reporting limits, compound lists and standard report format unless noted otherwise.
- If project specific MS/MSD samples are submitted, they may be billable.
- Volatile soils need to be frozen within 48 hours of collection. To facilitate this, they should be submitted to the lab within 40 hours of collection.
- TAT (Turn Around Time) is in working days unless otherwise specified above.
- To ensure requested TAT is available, please coordinate with your Pace Analytical representative at time of sample submittal.
- Any deviation from the above quoted scope of work, including sample arrival date and volume, may result in adjustment of prices.
- Please include Quote Number on Chain-of-custody to ensure proper billing.
- Pricing includes standard delivery of bottle/sample kits and coolers.
- Charges will apply for non-standard shipping and for projects where shipping exceeds 10% of the total analytical costs of the shipment.
- All air and air-related equipment charges (i.e. rental fees for unused, unreturned or damaged equipment, are detailed in the Pace® Canister Use Policy
- PACE RESERVES THE RIGHT TO SURCHARGE ON CREDIT CARD PAYMENTS BASED ON CARD TYPE AND ZIP CODE
- PACE RESERVES THE RIGHT TO PASS ALONG ALL EXPEDITED SHIPPING FEES. A MINIMUM FEE OF \$100 PER COOLER MAY BE APPLIED.

Pace Analytical Terms and Conditions

These Standard Terms (Terms) govern all services that Pace Analytical _____ ("Lab") will perform on behalf of _____ ("Client"), and supersede any other written provisions (including purchase/work orders) related to the services, as well as all prior discussions, courses of dealing, and/or performance, unless a separate, executed agreement for the same or similar services already exists between the Lab and Client (collectively "the Parties"), or the Parties subsequently agree to terminate or amend these Terms, as allowed in Section 10 and 12, respectively.

1. Definitions:

Chain of Custody (COC): A document evidencing the collection, handling, delivery, etc. of a sample or Sample Delivery Group

Holding Time: The maximum amount of time a sample may be stored before being analyzed.

Sample Delivery Acceptance (SDA): The date and time when Lab officially receives a sample or Sample Delivery Group, as evidenced by either a notation on the Chain of Custody or an entry in the Lab's information management system (LIMS).

Sample Delivery Group (SDG): A set of samples normally shipped and reported to the Lab as a group.

Turnaround Time (TAT): The maximum allowable period within which Lab must report out its analytical testing results to Client, calculated from the date of SDA.

2. Client's Obligations:

a. To initiate Lab's services, Client must reference a quotation number (if applicable) and complete one of the following steps:

i. Submit a completed purchase order by:

1. hand (i.e., in person)
2. mail, or
3. e-mail; or

ii. Place an order by:

1. telephone
2. e-mail, or
3. delivering a sample (or SDG) to Lab and completing the COC

b. Subject to occasional, mutually agreed-upon exceptions, Client must give five (5) days' prior notice for each sample delivery and provide the following information:

- i. Name of the responsible project manager
- ii. Name of the person submitting the sample
- iii. Name/location of collection site
- iv. Date and time of collection
- v. Specific testing being requested, and
- vi. Sufficient details about reporting requirement(s).

c. Client shall also:

- i. Remain liable for any loss or damage to sample(s) until SDA (including that which may occur as a result of third-party shipping delays)
- ii. Payment Terms: Net 30 days from date of invoice unless a valid fully executed agreement is on file with Pace.
- iii. Notify Lab about any disputed charges or results within 30 days of receiving applicable invoice



- iv. Reimburse Lab for any costs* related to delinquent payments
- v. Demonstrate its (or, if applicable, the Prime Client's) credit worthiness by accessing the following link: <https://www.pacelabs.com/my-account.html> and clicking on "Client Profile Information." (Note: Client must pre-pay for services pending completion of this process and Lab's approval of a credit line.)
- vi. Pay for any services it orders on any already analyzed sample
- vii. Obtain Lab's written consent before assigning billing or payment of Lab services to any third party, (failure to do so shall mean Client remains responsible for the payment of any outstanding balance)
- viii. Refrain from using any of Lab's supplies (e.g., containers) in connection with any non-Lab work
- ix. Ensure that any sample(s) containing any known hazardous substance is (are) labeled, packaged, manifested, transported, and delivered to Lab in accordance with all applicable regulations. (No SDA of any "high hazard" sample can occur without Lab's express permission.)
- x. Obtain Lab's prior written consent before publishing Lab's name and/or any data
- xi. Reimburse Lab for any out-of-scope services and related expenses (e.g., defending its analytical results or responding to a subpoena for documents and/or expert testimony)
- xii. Excuse Lab for any failure or delay in its performance caused by someone or something outside its control, e.g., a third party or "Force Majeure" event or circumstance, such as natural disasters or government shutdowns; and
- xiii. Accept responsibility for any claims, damages, losses, expenses*, etc. to the extent caused by Client's: breach of these Terms; negligence or willful misconduct (includes Client's use of Lab data for anything other than the specific purpose for which it was intended), or violation of applicable laws.

3. Lab's Obligations:

Lab shall:

- a. Perform its services in accordance with generally accepted analytical and environmental laboratory practices and professionally recognized standards.
- b. Identify on quotation if services will be sent to another Lab location or to a third party.
- c. Promptly notify Client of any:
 - i. Missing sample or otherwise compromised sample(s)
 - ii. Significant delays or other issues affecting Lab's services, or
 - iii. Subpoena or similar demand for Lab compliance
- d. Maintain high-quality services.
- e. Prepare and keep accurate records.
- f. Obtain/maintain any permit(s), license(s), or certification(s).
- g. Charge its fees on a net 30 basis (unless otherwise agreed).
- h. Impose a one and one half percent (1.5%) per month late charge on any unpaid balances.
- i. Assess a two and one half percent (2.5%) surcharge on any payments made by credit card. (Client can avoid this charge by paying with a debit card, an e-check/check by phone, a wire transfer, or an ACH payment.)
- j. Invoice Client for each sample or SDG as reported.
- k. Assume risk of loss or damage to any Client sample(s) upon SDA.
- l. Initiate analysis within established holding times – so long as SDA occurred within 48 hours of collection or the first half of the maximum allowed holding time.
- m. Indemnify Client for any claims, damages, losses, expenses*, etc. to the extent they were caused by Lab's breach of these Terms, negligence or willful misconduct, or the negligence and willful misconduct of persons for whom Lab is legally responsible.
- n. Warrant the results, with the express understanding that this warranty is exclusive and does not extend to any merchantability or fitness for a particular purpose.

4. Lab's Discretionary Actions:

Lab may:

- a. Cease all services, including any release of data, if Client does not pay as agreed
- b. Reject or rescind any SDA if Lab decides sample poses any risk or hazard
- c. Charge or bill Client directly for:
 - i. Any supplies (including containers) that are not used or returned
 - ii. Expedited outbound/return shipping for any sample that is not time-sensitive
 - iii. Disposal of any air samples that have not been reclaimed within seven (7) days of Lab's SDA thereof
 - iv. Disposal of any other sample not been reclaimed within 21 days of Lab's SDA thereof, or as otherwise required
 - v. A minimum fee for invoicing and/or handling any sample
 - vi. A sample that underwent SDA, but was not analyzed, at Client's direction
 - vii. Additional shipping and handling as deemed necessary
 - viii. Change in scope and/or rescheduling fees
 - ix. Minimum fees or additional surcharges as necessary
 - x. Reasonable attorneys' fees
 - xi. Project resampling related to missed deliveries, etc.
 - xii. Off cycle pricing increase dictated by the market
 - xiii. Any request for re-analysis following release of the report if the results are within the variability of the method (or acceptable parameters)
- d. Return unused portions of samples found or suspected to be hazardous to Client, at Client's cost.
- e. Retain Client's unreleased data and/or cancel Client's web portal access pending payment in full.
- f. Increase prices on an annual basis to support market-driven cost-increases.



5. Multiple Dilutions: Lab will report a single value for each analyte based on the most appropriate analysis or dilution for that analyte. Based on general screening where appropriate, samples will be reported on a dilution-only basis due to concentrations of target analytes present. Lab may attempt a 10-fold more concentrated analysis if practicable. Client may also request and pay for additional dilutions if practicable.

6. Dry Weight Correction / Percent (%) Moisture: Consistent with all applicable reporting methods, Lab will automatically analyze any solid sample (soil) for % moisture to allow for dry weight correction and charge accordingly. If "wet weight" reporting is requested by the client or the regulatory agency, Lab will maintain the charge for dry weight correction even if the results were not corrected for the applicable reporting criteria.

7. Confidentiality: The Parties agree that they will take all reasonable precautions to prevent the unauthorized disclosure of any proprietary or confidential information of each other and that they will not disclose such information except to those employees, subcontractors, or agents who have expressly agreed to maintain confidentiality.

8. Governing Law: These Terms shall be construed and interpreted pursuant to the laws of the State of Minnesota without giving effect to the principles of conflicts of law thereof.

9. Term: The Parties shall perform the services identified in the applicable purchase order or other agreement until completed or terminated in accordance with Section 10 below

10. Termination:

- a. Either party may terminate these Terms upon 30 days' prior written notice.
- b. Lab may immediately terminate for any breach by Client, including its failure to pay within 60 days of Lab's dated invoice.

11. Limitation of Liability:

- a. If a court of competent jurisdiction finds that Lab failed to meet applicable standards and if Client suffers damages as a result, Lab's aggregate liability for its negligence or unintentional breach of contract shall not exceed the total fee paid for its services.
- b. This limitation shall not apply to any Client losses arising from Lab's negligence or willful misconduct, so long as Client:
 - i. Notifies Lab of any issue within thirty (30) days of receiving applicable invoice, and
 - ii. Allows Lab to defend its data, even to a regulatory agency that may have previously rejected same.
- c. Notwithstanding the foregoing, neither Lab nor Client shall be liable to the other for special, incidental, consequential, or punitive damages.

12. Amendment/Change Order: Any attempt to modify, vary, supplement, or clarify any provision of these Terms is of no effect unless reduced to writing and signed by both Parties.

13. Storage of Data: Following final report issuance, Lab will retain back-up data and final test reports for ten (10) years in a format from which the data and/or test report can be reproduced.

14. Intellectual Property: Lab shall retain sole ownership of any new method, procedure, or equipment it develops or discovers while performing services for Client pursuant to these Terms. Lab may, however, grant a license to the Client for its use of same.

15. Non-competition: Client shall not solicit or recruit any Lab personnel for at least 12 months following the termination of the services governed by these Terms.

16. Non-assignment: Neither party may assign or transfer any right or obligation existing under these Terms without prior written notice to the other party, except that Lab may freely transfer the services to another Lab location or, with Client's permission, subcontract the services to a third-party.

17. Insurance: Lab carries insurance with the limits of coverage as indicated below and will, upon Client's request, submit certificates of insurance showing same.

- a. General Liability - \$1,000,000 each occurrence; \$2,000,000 general aggregate;
- b. Personal and Advertising Injury - \$1,000,000;
- c. Automobile Liability - \$1,000,000 combined single limit;
- d. Excess Liability Umbrella - \$5,000,000 aggregate; \$5,000,000 each occurrence;
- e. Worker's Compensation Insurance - statutory limits; and
- f. Professional Liability \$5,000,000 aggregate, \$5,000,000 per claim.

18. Miscellaneous Provisions:

- a. In the absence of an executed agreement between the Parties, the SDA will constitute acceptance of these Terms by Client.
- b. The Parties may use and rely upon electronic signatures and documents for the execution and delivery of these Terms and any amendments, notices, records, disclosures, or other documents of any type sent or received in accordance with these Terms.
- c. The Parties are at all times acting and performing as independent contractors; neither one shall ever be considered an agent, servant, employee, or partner of the other.
- d. These Terms shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.
- e. Lab's compliance with a subpoena or other order shall not violate any requirement for confidentiality between the Parties.
- f. If any Term herein is invalidated or deemed unenforceable, it shall not affect the validity or enforceability of the other Terms.

IN WITNESS WHEREOF, Client and Lab have executed this Agreement through their duly authorized representatives as of the last date below:



9800 Kinsey Ave, Suite 100
Huntersville, NC 28078
Phone: 704-875-9092
Fax: 704-875-9091

[Client] _____

By: _____

Name: _____

Title: _____

Date: _____

Pace Analytical

By: _____

Name: _____

Title: _____

Date: _____

*May include reasonable attorney's fees

Quote Prepared by:

Lynette Ray

lynette.ray@pacelabs.com



9800 Kinney Ave, Suite 100
 Huntersville, NC 28078
 Phone: 704-875-9092
 Fax: 704-875-9091

Quote Prepared for:

Town of Apex	Jessica Sloan
PO Box250	(919) 372-7478
Apex, NC 27502	jessica.sloan@apexnc.org

Pace® Contact Information

Account Executive	Pace Project Manager
Haynes Campbell	
haynes.campbell@pacelabs.com	

Project Information

Quote Name	00162778 - Apex_FY25/26_DWPricing_05.29.24	Created Date	5/30/2024
Quote Number	00162778	Expiration Date	6/30/2026
Standard TAT:	10 Business Days	Report Level	Level II
Project Location	NC	EDD Requirements:	NA
		Certification	NC
		Requirements	

Payment Information

Customer Accounts	Kimberly Nobles	Is P.O. Required for No
Payable Contact:		Payment?
Customer Accounts	kimberly.nobles@apexnc.org	
Payable Email:		
Credit Application	Credit Approved	
Approved?		

Minimum Laboratory Fee (per work order)

Waived

Quote Details

Quantity	Method	Product	Line Item Description	Sales Price	Sub-Total	Total-Price
1.00	EPA 552.3	Haloacetic Acids (HAA5) (Disinfection Byproducts)		\$144.00	\$144.00	\$144.00
1.00	EPA 200.8 (ICP/MS)	Metal Analysis (2 Metals) (water)	Lead & Copper - Includes \$6 metals digestion fee	\$36.00	\$36.00	\$36.00
1.00	EPA 1631	Mercury (Hg), Low Level (water)	\$88 for sample + \$88 for blank	\$88.00	\$88.00	\$88.00
1.00	EPA 524.2	Total Trihalomethanes (TTHMs) (Disinfection Byproducts)		\$93.00	\$93.00	\$93.00
1.00		Sample Disposal (per sample)	WAIVED	\$0.00	\$0.00	\$0.00
1.00		Environmental Impact Fee (Per Invoice)		\$16.00	\$16.00	\$16.00



Estimated Grand-Total

\$377.00

[New to Pace? Complete your Credit Application here!](#)

Additional Pricing Considerations:

If you have specific questions about any conditions noted below, please contact your Pace Analytical Representative.

- Unless accepted, signed and returned, or otherwise noted above, proposal expires 60 days from Created Date above.
- Quoted prices include standard Pace Analytical QA/QC, reporting limits, compound lists and standard report format unless noted otherwise.
- If project specific MS/MSD samples are submitted, they may be billable.
- Volatile soils need to be frozen within 48 hours of collection. To facilitate this, they should be submitted to the lab within 40 hours of collection.
- TAT (Turn Around Time) is in working days unless otherwise specified above.
- To ensure requested TAT is available, please coordinate with your Pace Analytical representative at time of sample submittal.
- Any deviation from the above quoted scope of work, including sample arrival date and volume, may result in adjustment of prices.
- Please include Quote Number on Chain-of-custody to ensure proper billing.
- Pricing includes standard delivery of bottle/sample kits and coolers.
- Charges will apply for non-standard shipping and for projects where shipping exceeds 10% of the total analytical costs of the shipment.
- All air and air-related equipment charges (i.e. rental fees for unused, unreturned or damaged equipment, are detailed in the Pace® Canister Use Policy
- PACE RESERVES THE RIGHT TO SURCHARGE ON CREDIT CARD PAYMENTS BASED ON CARD TYPE AND ZIP CODE
- PACE RESERVES THE RIGHT TO PASS ALONG ALL EXPEDITED SHIPPING FEES. A MINIMUM FEE OF \$100 PER COOLER MAY BE APPLIED.

Pace Analytical Terms and Conditions

These Standard Terms (Terms) govern all services that Pace Analytical _____ ("Lab") will perform on behalf of _____ ("Client"), and supersede any other written provisions (including purchase/work orders) related to the services, as well as all prior discussions, courses of dealing, and/or performance, unless a separate, executed agreement for the same or similar services already exists between the Lab and Client (collectively "the Parties"), or the Parties subsequently agree to terminate or amend these Terms, as allowed in Section 10 and 12, respectively.

1. Definitions:

Chain of Custody (COC): A document evidencing the collection, handling, delivery, etc. of a sample or Sample Delivery Group

Holding Time: The maximum amount of time a sample may be stored before being analyzed.

Sample Delivery Acceptance (SDA): The date and time when Lab officially receives a sample or Sample Delivery Group, as evidenced by either a notation on the Chain of Custody or an entry in the Lab's information management system (LIMS).

Sample Delivery Group (SDG): A set of samples normally shipped and reported to the Lab as a group.

Turnaround Time (TAT): The maximum allowable period within which Lab must report out its analytical testing results to Client, calculated from the date of SDA.

2. Client's Obligations:

a. To initiate Lab's services, Client must reference a quotation number (if applicable) and complete one of the following steps:

i. Submit a completed purchase order by:

1. hand (i.e., in person)
2. mail, or
3. e-mail; or

ii. Place an order by:

1. telephone
2. e-mail, or
3. delivering a sample (or SDG) to Lab and completing the COC

b. Subject to occasional, mutually agreed-upon exceptions, Client must give five (5) days' prior notice for each sample delivery and provide the following information:

- i. Name of the responsible project manager
- ii. Name of the person submitting the sample
- iii. Name/location of collection site
- iv. Date and time of collection
- v. Specific testing being requested, and
- vi. Sufficient details about reporting requirement(s).

c. Client shall also:

- i. Remain liable for any loss or damage to sample(s) until SDA (including that which may occur as a result of third-party shipping delays)
- ii. Payment Terms: Net 30 days from date of invoice unless a valid fully executed agreement is on file with Pace.
- iii. Notify Lab about any disputed charges or results within 30 days of receiving applicable invoice



- iv. Reimburse Lab for any costs* related to delinquent payments
- v. Demonstrate its (or, if applicable, the Prime Client's) credit worthiness by accessing the following link: <https://www.pacelabs.com/my-account.html> and clicking on "Client Profile Information." (Note: Client must pre-pay for services pending completion of this process and Lab's approval of a credit line.)
- vi. Pay for any services it orders on any already analyzed sample
- vii. Obtain Lab's written consent before assigning billing or payment of Lab services to any third party, (failure to do so shall mean Client remains responsible for the payment of any outstanding balance)
- viii. Refrain from using any of Lab's supplies (e.g., containers) in connection with any non-Lab work
- ix. Ensure that any sample(s) containing any known hazardous substance is (are) labeled, packaged, manifested, transported, and delivered to Lab in accordance with all applicable regulations. (No SDA of any "high hazard" sample can occur without Lab's express permission.)
- x. Obtain Lab's prior written consent before publishing Lab's name and/or any data
- xi. Reimburse Lab for any out-of-scope services and related expenses (e.g., defending its analytical results or responding to a subpoena for documents and/or expert testimony)
- xii. Excuse Lab for any failure or delay in its performance caused by someone or something outside its control, e.g., a third party or "Force Majeure" event or circumstance, such as natural disasters or government shutdowns; and
- xiii. Accept responsibility for any claims, damages, losses, expenses*, etc. to the extent caused by Client's: breach of these Terms; negligence or willful misconduct (includes Client's use of Lab data for anything other than the specific purpose for which it was intended), or violation of applicable laws.

3. Lab's Obligations:

Lab shall:

- a. Perform its services in accordance with generally accepted analytical and environmental laboratory practices and professionally recognized standards.
- b. Identify on quotation if services will be sent to another Lab location or to a third party.
- c. Promptly notify Client of any:
 - i. Missing sample or otherwise compromised sample(s)
 - ii. Significant delays or other issues affecting Lab's services, or
 - iii. Subpoena or similar demand for Lab compliance
- d. Maintain high-quality services.
- e. Prepare and keep accurate records.
- f. Obtain/maintain any permit(s), license(s), or certification(s).
- g. Charge its fees on a net 30 basis (unless otherwise agreed).
- h. Impose a one and one half percent (1.5%) per month late charge on any unpaid balances.
- i. Assess a two and one half percent (2.5%) surcharge on any payments made by credit card. (Client can avoid this charge by paying with a debit card, an e-check/check by phone, a wire transfer, or an ACH payment.)
- j. Invoice Client for each sample or SDG as reported.
- k. Assume risk of loss or damage to any Client sample(s) upon SDA.
- l. Initiate analysis within established holding times – so long as SDA occurred within 48 hours of collection or the first half of the maximum allowed holding time.
- m. Indemnify Client for any claims, damages, losses, expenses*, etc. to the extent they were caused by Lab's breach of these Terms, negligence or willful misconduct, or the negligence and willful misconduct of persons for whom Lab is legally responsible.
- n. Warrant the results, with the express understanding that this warranty is exclusive and does not extend to any merchantability or fitness for a particular purpose.

4. Lab's Discretionary Actions:

Lab may:

- a. Cease all services, including any release of data, if Client does not pay as agreed
- b. Reject or rescind any SDA if Lab decides sample poses any risk or hazard
- c. Charge or bill Client directly for:
 - i. Any supplies (including containers) that are not used or returned
 - ii. Expedited outbound/return shipping for any sample that is not time-sensitive
 - iii. Disposal of any air samples that have not been reclaimed within seven (7) days of Lab's SDA thereof
 - iv. Disposal of any other sample not been reclaimed within 21 days of Lab's SDA thereof, or as otherwise required
 - v. A minimum fee for invoicing and/or handling any sample
 - vi. A sample that underwent SDA, but was not analyzed, at Client's direction
 - vii. Additional shipping and handling as deemed necessary
 - viii. Change in scope and/or rescheduling fees
 - ix. Minimum fees or additional surcharges as necessary
 - x. Reasonable attorneys' fees
 - xi. Project resampling related to missed deliveries, etc.
 - xii. Off cycle pricing increase dictated by the market
 - xiii. Any request for re-analysis following release of the report if the results are within the variability of the method (or acceptable parameters)
- d. Return unused portions of samples found or suspected to be hazardous to Client, at Client's cost.
- e. Retain Client's unreleased data and/or cancel Client's web portal access pending payment in full.
- f. Increase prices on an annual basis to support market-driven cost-increases.



5. Multiple Dilutions: Lab will report a single value for each analyte based on the most appropriate analysis or dilution for that analyte. Based on general screening where appropriate, samples will be reported on a dilution-only basis due to concentrations of target analytes present. Lab may attempt a 10-fold more concentrated analysis if practicable. Client may also request and pay for additional dilutions if practicable.

6. Dry Weight Correction / Percent (%) Moisture: Consistent with all applicable reporting methods, Lab will automatically analyze any solid sample (soil) for % moisture to allow for dry weight correction and charge accordingly. If "wet weight" reporting is requested by the client or the regulatory agency, Lab will maintain the charge for dry weight correction even if the results were not corrected for the applicable reporting criteria.

7. Confidentiality: The Parties agree that they will take all reasonable precautions to prevent the unauthorized disclosure of any proprietary or confidential information of each other and that they will not disclose such information except to those employees, subcontractors, or agents who have expressly agreed to maintain confidentiality.

8. Governing Law: These Terms shall be construed and interpreted pursuant to the laws of the State of Minnesota without giving effect to the principles of conflicts of law thereof.

9. Term: The Parties shall perform the services identified in the applicable purchase order or other agreement until completed or terminated in accordance with Section 10 below

10. Termination:

- a. Either party may terminate these Terms upon 30 days' prior written notice.
- b. Lab may immediately terminate for any breach by Client, including its failure to pay within 60 days of Lab's dated invoice.

11. Limitation of Liability:

- a. If a court of competent jurisdiction finds that Lab failed to meet applicable standards and if Client suffers damages as a result, Lab's aggregate liability for its negligence or unintentional breach of contract shall not exceed the total fee paid for its services.
- b. This limitation shall not apply to any Client losses arising from Lab's negligence or willful misconduct, so long as Client:
 - i. Notifies Lab of any issue within thirty (30) days of receiving applicable invoice, and
 - ii. Allows Lab to defend its data, even to a regulatory agency that may have previously rejected same.
- c. Notwithstanding the foregoing, neither Lab nor Client shall be liable to the other for special, incidental, consequential, or punitive damages.

12. Amendment/Change Order: Any attempt to modify, vary, supplement, or clarify any provision of these Terms is of no effect unless reduced to writing and signed by both Parties.

13. Storage of Data: Following final report issuance, Lab will retain back-up data and final test reports for ten (10) years in a format from which the data and/or test report can be reproduced.

14. Intellectual Property: Lab shall retain sole ownership of any new method, procedure, or equipment it develops or discovers while performing services for Client pursuant to these Terms. Lab may, however, grant a license to the Client for its use of same.

15. Non-competition: Client shall not solicit or recruit any Lab personnel for at least 12 months following the termination of the services governed by these Terms.

16. Non-assignment: Neither party may assign or transfer any right or obligation existing under these Terms without prior written notice to the other party, except that Lab may freely transfer the services to another Lab location or, with Client's permission, subcontract the services to a third-party.

17. Insurance: Lab carries insurance with the limits of coverage as indicated below and will, upon Client's request, submit certificates of insurance showing same.

- a. General Liability - \$1,000,000 each occurrence; \$2,000,000 general aggregate;
- b. Personal and Advertising Injury - \$1,000,000;
- c. Automobile Liability - \$1,000,000 combined single limit;
- d. Excess Liability Umbrella - \$5,000,000 aggregate; \$5,000,000 each occurrence;
- e. Worker's Compensation Insurance - statutory limits; and
- f. Professional Liability \$5,000,000 aggregate, \$5,000,000 per claim.

18. Miscellaneous Provisions:

- a. In the absence of an executed agreement between the Parties, the SDA will constitute acceptance of these Terms by Client.
- b. The Parties may use and rely upon electronic signatures and documents for the execution and delivery of these Terms and any amendments, notices, records, disclosures, or other documents of any type sent or received in accordance with these Terms.
- c. The Parties are at all times acting and performing as independent contractors; neither one shall ever be considered an agent, servant, employee, or partner of the other.
- d. These Terms shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.
- e. Lab's compliance with a subpoena or other order shall not violate any requirement for confidentiality between the Parties.
- f. If any Term herein is invalidated or deemed unenforceable, it shall not affect the validity or enforceability of the other Terms.

IN WITNESS WHEREOF, Client and Lab have executed this Agreement through their duly authorized representatives as of the last date below:



9800 Kinsey Ave, Suite 100
Huntersville, NC 28078
Phone: 704-875-9092
Fax: 704-875-9091

[Client] _____

By: _____

Name: _____

Title: _____

Date: _____

Pace Analytical

By: _____

Name: _____

Title: _____

Date: _____

*May include reasonable attorney's fees

Quote Prepared by:

Lynette Ray

lynette.ray@pacelabs.com



9800 Kinney Ave, Suite 100
 Huntersville, NC 28078
 Phone: 704-875-9092
 Fax: 704-875-9091

Quote Prepared for:

Town of Apex	Jessica Sloan
PO Box250	(919) 372-7478
Apex, NC 27502	jessica.sloan@apexnc.org

Pace® Contact Information

Account Executive	Pace Project Manager
Haynes Campbell	
haynes.campbell@pacelabs.com	

Project Information

Quote Name	00162779 - Apex_FY26/27_DWPricing_05.29.24	Created Date	5/30/2024
Quote Number	00162779	Expiration Date	6/30/2027
Standard TAT:	10 Business Days	Report Level	Level II
Project Location	NC	EDD Requirements:	NA
		Certification Requirements	NC

Payment Information

Customer Accounts	Kimberly Nobles	Is P.O. Required for No
Payable Contact:		Payment?
Customer Accounts	kimberly.nobles@apexnc.org	
Payable Email:		
Credit Application	Credit Approved	
Approved?		

Minimum Laboratory Fee (per work order)

Waived

Quote Details

Quantity	Method	Product	Line Item Description	Sales Price	Sub-Total	Total-Price
1.00	EPA 552.3	Haloacetic Acids (HAA5) (Disinfection Byproducts)		\$148.00	\$148.00	\$148.00
1.00	EPA 200.8 (ICP/MS)	Metal Analysis (2 Metals) (water)	Lead & Copper - Includes \$7 metals digestion fee	\$37.00	\$37.00	\$37.00
1.00	EPA 1631	Mercury (Hg), Low Level (water)	\$91 for sample + \$91 for blank	\$91.00	\$91.00	\$91.00
1.00	EPA 524.2	Total Trihalomethanes (TTHMs) (Disinfection Byproducts)		\$96.00	\$96.00	\$96.00
1.00		Sample Disposal (per sample)	WAIVED	\$0.00	\$0.00	\$0.00
1.00		Environmental Impact Fee (Per Invoice)		\$17.00	\$17.00	\$17.00



Estimated Grand-Total \$389.00

[New to Pace? Complete your Credit Application here!](#)

Additional Pricing Considerations:

If you have specific questions about any conditions noted below, please contact your Pace Analytical Representative.

- Unless accepted, signed and returned, or otherwise noted above, proposal expires 60 days from Created Date above.
- Quoted prices include standard Pace Analytical QA/QC, reporting limits, compound lists and standard report format unless noted otherwise.
- If project specific MS/MSD samples are submitted, they may be billable.
- Volatile soils need to be frozen within 48 hours of collection. To facilitate this, they should be submitted to the lab within 40 hours of collection.
- TAT (Turn Around Time) is in working days unless otherwise specified above.
- To ensure requested TAT is available, please coordinate with your Pace Analytical representative at time of sample submittal.
- Any deviation from the above quoted scope of work, including sample arrival date and volume, may result in adjustment of prices.
- Please include Quote Number on Chain-of-custody to ensure proper billing.
- Pricing includes standard delivery of bottle/sample kits and coolers.
- Charges will apply for non-standard shipping and for projects where shipping exceeds 10% of the total analytical costs of the shipment.
- All air and air-related equipment charges (i.e. rental fees for unused, unreturned or damaged equipment, are detailed in the Pace® Canister Use Policy
- PACE RESERVES THE RIGHT TO SURCHARGE ON CREDIT CARD PAYMENTS BASED ON CARD TYPE AND ZIP CODE
- PACE RESERVES THE RIGHT TO PASS ALONG ALL EXPEDITED SHIPPING FEES. A MINIMUM FEE OF \$100 PER COOLER MAY BE APPLIED.

Pace Analytical Terms and Conditions

These Standard Terms (Terms) govern all services that Pace Analytical _____ ("Lab") will perform on behalf of _____ ("Client"), and supersede any other written provisions (including purchase/work orders) related to the services, as well as all prior discussions, courses of dealing, and/or performance, unless a separate, executed agreement for the same or similar services already exists between the Lab and Client (collectively "the Parties"), or the Parties subsequently agree to terminate or amend these Terms, as allowed in Section 10 and 12, respectively.

1. Definitions:

Chain of Custody (COC): A document evidencing the collection, handling, delivery, etc. of a sample or Sample Delivery Group

Holding Time: The maximum amount of time a sample may be stored before being analyzed.

Sample Delivery Acceptance (SDA): The date and time when Lab officially receives a sample or Sample Delivery Group, as evidenced by either a notation on the Chain of Custody or an entry in the Lab's information management system (LIMS).

Sample Delivery Group (SDG): A set of samples normally shipped and reported to the Lab as a group.

Turnaround Time (TAT): The maximum allowable period within which Lab must report out its analytical testing results to Client, calculated from the date of SDA.

2. Client's Obligations:

a. To initiate Lab's services, Client must reference a quotation number (if applicable) and complete one of the following steps:

i. Submit a completed purchase order by:

1. hand (i.e., in person)
2. mail, or
3. e-mail; or

ii. Place an order by:

1. telephone
2. e-mail, or
3. delivering a sample (or SDG) to Lab and completing the COC

b. Subject to occasional, mutually agreed-upon exceptions, Client must give five (5) days' prior notice for each sample delivery and provide the following information:

- i. Name of the responsible project manager
- ii. Name of the person submitting the sample
- iii. Name/location of collection site
- iv. Date and time of collection
- v. Specific testing being requested, and
- vi. Sufficient details about reporting requirement(s).

c. Client shall also:

- i. Remain liable for any loss or damage to sample(s) until SDA (including that which may occur as a result of third-party shipping delays)
- ii. Payment Terms: Net 30 days from date of invoice unless a valid fully executed agreement is on file with Pace.
- iii. Notify Lab about any disputed charges or results within 30 days of receiving applicable invoice



- iv. Reimburse Lab for any costs* related to delinquent payments
- v. Demonstrate its (or, if applicable, the Prime Client's) credit worthiness by accessing the following link: <https://www.pacelabs.com/my-account.html> and clicking on "Client Profile Information." (Note: Client must pre-pay for services pending completion of this process and Lab's approval of a credit line.)
- vi. Pay for any services it orders on any already analyzed sample
- vii. Obtain Lab's written consent before assigning billing or payment of Lab services to any third party, (failure to do so shall mean Client remains responsible for the payment of any outstanding balance)
- viii. Refrain from using any of Lab's supplies (e.g., containers) in connection with any non-Lab work
- ix. Ensure that any sample(s) containing any known hazardous substance is (are) labeled, packaged, manifested, transported, and delivered to Lab in accordance with all applicable regulations. (No SDA of any "high hazard" sample can occur without Lab's express permission.)
- x. Obtain Lab's prior written consent before publishing Lab's name and/or any data
- xi. Reimburse Lab for any out-of-scope services and related expenses (e.g., defending its analytical results or responding to a subpoena for documents and/or expert testimony)
- xii. Excuse Lab for any failure or delay in its performance caused by someone or something outside its control, e.g., a third party or "Force Majeure" event or circumstance, such as natural disasters or government shutdowns; and
- xiii. Accept responsibility for any claims, damages, losses, expenses*, etc. to the extent caused by Client's: breach of these Terms; negligence or willful misconduct (includes Client's use of Lab data for anything other than the specific purpose for which it was intended), or violation of applicable laws.

3. Lab's Obligations:

Lab shall:

- a. Perform its services in accordance with generally accepted analytical and environmental laboratory practices and professionally recognized standards.
- b. Identify on quotation if services will be sent to another Lab location or to a third party.
- c. Promptly notify Client of any:
 - i. Missing sample or otherwise compromised sample(s)
 - ii. Significant delays or other issues affecting Lab's services, or
 - iii. Subpoena or similar demand for Lab compliance
- d. Maintain high-quality services.
- e. Prepare and keep accurate records.
- f. Obtain/maintain any permit(s), license(s), or certification(s).
- g. Charge its fees on a net 30 basis (unless otherwise agreed).
- h. Impose a one and one half percent (1.5%) per month late charge on any unpaid balances.
- i. Assess a two and one half percent (2.5%) surcharge on any payments made by credit card. (Client can avoid this charge by paying with a debit card, an e-check/check by phone, a wire transfer, or an ACH payment.)
- j. Invoice Client for each sample or SDG as reported.
- k. Assume risk of loss or damage to any Client sample(s) upon SDA.
- l. Initiate analysis within established holding times – so long as SDA occurred within 48 hours of collection or the first half of the maximum allowed holding time.
- m. Indemnify Client for any claims, damages, losses, expenses*, etc. to the extent they were caused by Lab's breach of these Terms, negligence or willful misconduct, or the negligence and willful misconduct of persons for whom Lab is legally responsible.
- n. Warrant the results, with the express understanding that this warranty is exclusive and does not extend to any merchantability or fitness for a particular purpose.

4. Lab's Discretionary Actions:

Lab may:

- a. Cease all services, including any release of data, if Client does not pay as agreed
- b. Reject or rescind any SDA if Lab decides sample poses any risk or hazard
- c. Charge or bill Client directly for:
 - i. Any supplies (including containers) that are not used or returned
 - ii. Expedited outbound/return shipping for any sample that is not time-sensitive
 - iii. Disposal of any air samples that have not been reclaimed within seven (7) days of Lab's SDA thereof
 - iv. Disposal of any other sample not been reclaimed within 21 days of Lab's SDA thereof, or as otherwise required
 - v. A minimum fee for invoicing and/or handling any sample
 - vi. A sample that underwent SDA, but was not analyzed, at Client's direction
 - vii. Additional shipping and handling as deemed necessary
 - viii. Change in scope and/or rescheduling fees
 - ix. Minimum fees or additional surcharges as necessary
 - x. Reasonable attorneys' fees
 - xi. Project resampling related to missed deliveries, etc.
 - xii. Off cycle pricing increase dictated by the market
 - xiii. Any request for re-analysis following release of the report if the results are within the variability of the method (or acceptable parameters)
- d. Return unused portions of samples found or suspected to be hazardous to Client, at Client's cost.
- e. Retain Client's unreleased data and/or cancel Client's web portal access pending payment in full.
- f. Increase prices on an annual basis to support market-driven cost-increases.



5. Multiple Dilutions: Lab will report a single value for each analyte based on the most appropriate analysis or dilution for that analyte. Based on general screening where appropriate, samples will be reported on a dilution-only basis due to concentrations of target analytes present. Lab may attempt a 10-fold more concentrated analysis if practicable. Client may also request and pay for additional dilutions if practicable.

6. Dry Weight Correction / Percent (%) Moisture: Consistent with all applicable reporting methods, Lab will automatically analyze any solid sample (soil) for % moisture to allow for dry weight correction and charge accordingly. If "wet weight" reporting is requested by the client or the regulatory agency, Lab will maintain the charge for dry weight correction even if the results were not corrected for the applicable reporting criteria.

7. Confidentiality: The Parties agree that they will take all reasonable precautions to prevent the unauthorized disclosure of any proprietary or confidential information of each other and that they will not disclose such information except to those employees, subcontractors, or agents who have expressly agreed to maintain confidentiality.

8. Governing Law: These Terms shall be construed and interpreted pursuant to the laws of the State of Minnesota without giving effect to the principles of conflicts of law thereof.

9. Term: The Parties shall perform the services identified in the applicable purchase order or other agreement until completed or terminated in accordance with Section 10 below

10. Termination:

- a. Either party may terminate these Terms upon 30 days' prior written notice.
- b. Lab may immediately terminate for any breach by Client, including its failure to pay within 60 days of Lab's dated invoice.

11. Limitation of Liability:

- a. If a court of competent jurisdiction finds that Lab failed to meet applicable standards and if Client suffers damages as a result, Lab's aggregate liability for its negligence or unintentional breach of contract shall not exceed the total fee paid for its services.
- b. This limitation shall not apply to any Client losses arising from Lab's negligence or willful misconduct, so long as Client:
 - i. Notifies Lab of any issue within thirty (30) days of receiving applicable invoice, and
 - ii. Allows Lab to defend its data, even to a regulatory agency that may have previously rejected same.
- c. Notwithstanding the foregoing, neither Lab nor Client shall be liable to the other for special, incidental, consequential, or punitive damages.

12. Amendment/Change Order: Any attempt to modify, vary, supplement, or clarify any provision of these Terms is of no effect unless reduced to writing and signed by both Parties.

13. Storage of Data: Following final report issuance, Lab will retain back-up data and final test reports for ten (10) years in a format from which the data and/or test report can be reproduced.

14. Intellectual Property: Lab shall retain sole ownership of any new method, procedure, or equipment it develops or discovers while performing services for Client pursuant to these Terms. Lab may, however, grant a license to the Client for its use of same.

15. Non-competition: Client shall not solicit or recruit any Lab personnel for at least 12 months following the termination of the services governed by these Terms.

16. Non-assignment: Neither party may assign or transfer any right or obligation existing under these Terms without prior written notice to the other party, except that Lab may freely transfer the services to another Lab location or, with Client's permission, subcontract the services to a third-party.

17. Insurance: Lab carries insurance with the limits of coverage as indicated below and will, upon Client's request, submit certificates of insurance showing same.

- a. General Liability - \$1,000,000 each occurrence; \$2,000,000 general aggregate;
- b. Personal and Advertising Injury - \$1,000,000;
- c. Automobile Liability - \$1,000,000 combined single limit;
- d. Excess Liability Umbrella - \$5,000,000 aggregate; \$5,000,000 each occurrence;
- e. Worker's Compensation Insurance - statutory limits; and
- f. Professional Liability \$5,000,000 aggregate, \$5,000,000 per claim.

18. Miscellaneous Provisions:

- a. In the absence of an executed agreement between the Parties, the SDA will constitute acceptance of these Terms by Client.
- b. The Parties may use and rely upon electronic signatures and documents for the execution and delivery of these Terms and any amendments, notices, records, disclosures, or other documents of any type sent or received in accordance with these Terms.
- c. The Parties are at all times acting and performing as independent contractors; neither one shall ever be considered an agent, servant, employee, or partner of the other.
- d. These Terms shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.
- e. Lab's compliance with a subpoena or other order shall not violate any requirement for confidentiality between the Parties.
- f. If any Term herein is invalidated or deemed unenforceable, it shall not affect the validity or enforceability of the other Terms.

IN WITNESS WHEREOF, Client and Lab have executed this Agreement through their duly authorized representatives as of the last date below:



9800 Kinsey Ave, Suite 100
Huntersville, NC 28078
Phone: 704-875-9092
Fax: 704-875-9091

[Client] _____

By: _____

Name: _____

Title: _____

Date: _____

Pace Analytical

By: _____

Name: _____

Title: _____

Date: _____

*May include reasonable attorney's fees

Quote Prepared by:

Lynette Ray

lynette.ray@pacelabs.com