



# ECS Southeast, LLP

Proposal for Construction Materials Testing and Special Inspection Services

## **New City Hall**

405 Main Street  
Ashland City, Tennessee

ECS Proposal Number 26:11688

November 3, 2023



Chief Chuck Walker  
P.O. Box 35  
Ashland City, TN 37015

Reference: Proposal for Construction Materials Testing & Special Inspection Services  
New City Hall  
405 Main Street  
Ashland City, Tennessee

ECS Southeast, LLP (ECS) appreciates this opportunity and is pleased to submit this proposal to provide Construction Materials Testing & Special Inspection Services for the above-referenced project. This proposal reviews our understanding of the project information, outlines our proposed scope of services, and presents our fee estimate—together with the applicable schedule of unit rates for this project. Our considerable experience with similar projects will help us provide efficient, cost-effective construction observation, testing, and engineering consulting services.

### PROJECT UNDERSTANDING

We understand the project will consist of the ground up construction of a new 16,848 square foot City Hall located in Ashland City, TN. The project will consist of the construction of a one-story building, green space, retaining walls, parking, and drive lanes.

Our understanding of the project is based on the following project documents that you provided to ECS:

- Architectural Drawings from Joshaua A. Wright Architect, dated January 22, 2021
- Structural Drawings from CSR Engineering, dated January 19, 2023
- Civil Drawings from CSR Engineering, dated January 26, 2021
- Geotechnical Report from ECS Southeast, dated February 1, 2023

Based on the information provided, the structure will utilize shallow foundations, concrete slabs-on-grade, wood framing, structural steel, and asphalt site pavement. The shallow column and continuous foundations shall consist of a bearing capacity of 3,000 psf. A retaining wall will also be constructed north and south of the proposed building.

We were not provided with a preliminary construction schedule in order to develop this proposal. Therefore, the scope and quantities provided herein are based on our experience with projects of similar magnitude and the local project experience of our engineering personnel.

### SCOPE OF SERVICES

We propose to provide qualified engineers and engineering technicians to perform the requested services. Our scope of services is presented on the attached fee estimate; however, the following reporting, testing and inspection services may be requested on this project:

#### **Earthwork/Soils (*Proofrolls/Undercut/Density Testing*)**

- Proofroll the site to observe that unstable soils have been identified and removed or repaired in-place.
- Conduct laboratory Proctor tests on proposed engineered fill soils.

- Provide continuous observation of fill placement activities for conformance with the project geotechnical report.
- Perform in-place density testing of fill materials to document the percent compaction/in-place dry density is in compliance with the project requirements.

**Shallow Foundations (*Continuous and Isolated Spread Footings*)**

- Observe the excavated dimensions of the foundation excavations for plan compliance.
- Perform Dynamic Cone Penetrometer (DCP) testing to determine the foundation horizon bearing capacity for compliance with the design criteria.
- Observe reinforcing steel at each foundation excavation location for bar size, quantity, length, splice, lap, coverage, and positioning.
- Collect and review concrete batch tickets to confirm compliance with the approved mix design(s).
- Make and cure 4-inch by 8-inch concrete cylinder test specimens for compressive strength testing per specifications. (one 7-day break, three 28-day breaks, and one reserve)
- Deliver test specimens to ECS' laboratory within 24 hours after casting.
- Laboratory curing, compressive strength testing, and reporting of concrete cylinder test specimens.

**Concrete (*Slab-on-Grade*)**

- Collect and review concrete batch tickets to confirm compliance with the approved mix design(s).
- Observe reinforcing steel prior to concrete placement to confirm bar size, grade of steel, lap splices, clearances, support methods, and cleanliness.
- Observe anchor bolts prior to concrete placement for proper placement and embedment.
- Document general curing procedures.
- If extreme weather conditions are apparent, document that hot or cold weather procedures are followed.
- Visually check the concrete in trucks as they arrive on site for proper slump and observe general placement procedures.
- Sample and test plastic concrete to include slump tests, air content, unit weight of lightweight concrete, and temperature.
- Make and cure 4-inch by 8-inch concrete cylinder test specimens for compressive strength testing per specifications. (7-day breaks, three 28-day breaks, and one reserve)
- Deliver test specimens to ECS' laboratory within 24 hours after casting.
- Laboratory curing, compressive strength testing and report of concrete cylinder test specimens.

**Structural Masonry**

- Provide continuous observations of general masonry construction (cell cleanliness, grout lift height, on-site mixing/proportioning of mortar and/or grout, consolidation of grout, etc.).
- Observe that masonry contractor is checking the wall for plumbness.
- Observe anchorages and reinforcing steel prior to concrete placement to confirm bar size, grade of steel, lap splices, clearances, support methods, and cleanliness.
- Observe that the contractor is installing embed materials in general accordance with the plans and specifications.
- Document the general construction of mortar joints.
- Document the size and type of masonry units.
- Observe and document control joints are installed per the approved plans for spacing and installation.
- Observe and document the specified control joint filler material is being installed as specified.

- Fabricate mortar cubes and grout prisms for compressive strength testing.
- Obtain samples of CMU materials for compressive strength testing.

**Wood Construction**

- Observe wood products and structural panel sheathing for official grade mark to ascertain whether it is the grade and thickness shown on the approved building plans.
- Observe the nominal size of framing members at adjoining panel edges, the nail or staple diameter and length, the number of fastener lines and that spacing between fasteners in each line and at edge margins agrees with the approved building plans.
- Observe shear wall hold-downs and embedment depth. Observe wood trusses and their connection to structure.

**Structural Steel**

- Visit the fabrication shop and provide special inspections, non-destructive testing (MT-PT-UT), and review quality control procedures. (Unless the work is done on the premises of a fabricator registered and approved per AHJ / AISC)
- Review the erector's quality control procedures for high-strength bolting, field welding, decking, steel headed stud anchor placement, field cutting, and heating.
- Review Material Test Records (MTR's) for main steel elements, fasteners, anchor rods, welding consumables, and headed stud anchors; including the identification procedure for each.
- Review the steel erector's Welding Procedure Specifications, Procedure Qualification Records, and Welder Performance Qualifications for materials being installed on site.
- Perform observation on the fit-up of groove and fillet welds including:
  - Joint Preparations
  - Dimensions (alignment, root opening, root face, bevel angle)
  - Cleanliness (condition of faying surfaces)
  - Tack Welding (tack weld quality, size, and location)
- Observe the configuration of access holes, control and handling of welding consumables, and environmental conditions (wind, rain, temperature).
- Confirm the WPS is followed during welding and use of the proper welding techniques.
- Provide observation of repair activities, arc strikes, backing removal, and completed weld joints for visual acceptance per AWS D1.1-2015.
- Provide Ultrasonic Testing for CJP Welds 5/16" and thicker (100% for Risk III and higher).
- Provide observation of high strength bolts for compliance with AISC, RCSC, and project specifications. (For joints other than snug-tight, pre-tensioning procedures shall be performed by the erector and observed by ECS, some may require continuous monitoring during pre-installation)
- Observe steel framing to verify compliance with the field installed details shown on the erection drawings.
- Observe metal decking installation for compliance with project specifications. If welded, this includes weld size and type, filler material, welder qualifications, welding procedures, and final visual acceptance per AWS D1.3-2018. If mechanically attached, observations include fastener size and type, material, pattern, and compliance with project specifications.
- Provide documentation of events in the field and notify the appropriate personnel upon recognition of deficiencies. Perform the following continuous observations as related to on-site structural steel welded connections:
  - Provide continuous observations of the following welded connections:
    - Steel Headed Stud Anchor Production Testing and Installation

- Provide periodic observations of the following welded connections:
  - Complete and Partial Penetration Groove Welds (during and after welding)
  - Single and multi-pass fillet welds (during and after welding)

**Subbase and Paving (*Light and Heavy-Duty Asphalt and Concrete Pavement*)**

- Observe proofrolling of subgrades, provide recommendations and observe corrective actions at excessively soft areas prior to placement of subbase course.
- Observe placement of subbase course and perform appropriate in-place density tests as directed by specifications.
- Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.
- Review Job Mix Formula data for proposed bituminous pavement materials.
- Monitor temperature and density of asphalt pavements during installation and provide information as to the performance of these materials during installation for the purpose of quality control.
- Extract and analyze asphalt cores after placement to verify asphalt thickness and bulk specific gravity, if required.
- Sample and test plastic concrete to include slump tests, air content, unit weight of lightweight concrete, and temperature.
- Make and cure 4-inch by 8-inch concrete cylinder test specimens for compressive strength testing per specifications. (7-day breaks, three 28-day breaks, and one reserve)
- Deliver test specimens to ECS' laboratory within 24 hours after casting.
- Laboratory curing, compressive strength testing and report of concrete cylinder test specimens.

**Erosion Prevention and Sediment Control Inspections (if requested)**

- Perform inspections of erosion and sediment control features of the construction site. Inspections will be performed twice per week and at least 72 hours apart, in accordance with Section 3.5.8.2 of the Tennessee Construction General Permit.
- Perform inspections of erosion and sediment control features of the construction site, as mandated by the local jurisdiction, the state of Tennessee, and any other applicable governing authorities.
- Complete the ECS inspection reports (normally a one-page checklist with comments/recommendations) and send to your office.
- Services shall be provided for the duration of land disturbance activities at the site, unless directed to end sooner.

**UNDERSTANDING CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTIONS**

Construction Materials Testing and Special Inspection (CMT/SI) services are 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 specifications. These services are provided at periodic intervals which typically are defined by the project specifications and on some occasions by the applicable building code. Test locations for most materials, i.e., soils and concrete are generally based upon random selection as such not all materials incorporated into a construction project are tested or observed.

Obviously the greater the testing frequency, the greater the confidence level that the test results are representative of other untested areas, however, no amount of testing can assure 100% compliance.

Testing and observation services 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 reasonable effort to test in accordance with the applicable project requirements and to 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.

## COMMUNICATIONS

To expedite the timely distribution of our daily reports, our field personnel utilize wireless hand-held technology to collect, process, and return data to our Murfreesboro office. Our use of this technology typically facilitates electronic distribution of our reports within approximately **24 hours**. This enhanced reporting technology allows us to simultaneously communicate our testing data with all project team members.

We anticipate our services will be needed on a full-time basis during earthwork and foundation installation and typically on an on-call basis thereafter. The appropriate contractor or owner representative should contact our scheduling coordinator to provide the appropriate level of staffing to meet the project requirements; the direct phone number is (615)885-4983. All scheduling requests should occur prior to 3:00 pm on the day before services are required so that the proper personnel may be scheduled for the required inspection task. Each scheduling request will be assigned a work order number so that the scheduled testing and inspection is documented. We also ask that we be provided with one full set of up-to-date project drawings and specifications prior to starting work on this project.

ECS will transmit reports by e-mail (and up to three hard copies via U.S. Mail, if requested). Please list those to whom the reports should be sent and provide their e-mail addresses or mailing addresses, as appropriate, on the attached Proposal Acceptance Form.

## FEES/COST OF SERVICES

Based upon the scope of services and our fee schedule, ECS estimates that our base scope of services for this project will be on the order of **\$34,019.50 with an alternate scope for the site work and pavements of \$10,717.50. If the cost for our services is less than the estimate, these savings will be passed on to you.** Our budget estimate is based upon available information, as well as our experience with similar projects. Additional site visits for the specific task of retesting failed tests or unforeseen conditions are not included in the estimated cost.

ECS will invoice our services on a unit-rate basis in accordance with the unit rates provided in the attached Project Fee Schedule. All unit prices listed herein shall remain as stated throughout the project. Invoices will be submitted monthly—typically on or about the 10th day of each month.

**AUTHORIZATION**

Your acceptance of this proposal may be indicated by signing and returning the enclosed Proposal Acceptance form to us. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

By signing the Proposal Acceptance Form—or by referencing this proposal in other documents intended to authorize ECS to proceed with the scope of services described above—you are also accepting the Terms and Conditions of Service. This proposal is valid for a period of sixty (60) days; beyond that date it may be necessary to revise our schedule or fee.

Fully completing and signing the attached Proposal Acceptance Form will provide formal authorization for ECS to enter the site and perform the above work, as well as providing proper invoicing instructions and distribution lists for reports and correspondence. Please provide any specific instructions or details not covered in this proposal on the attached Proposal Acceptance Form. Please note we have provided a place to for you to enter invoicing instructions and report distribution.

We look forward to the opportunity to work with you on this project and hope to serve as your consultant in the future. If you have questions, or if we can be of additional service, please contact us at (615)885-4983.

Respectfully submitted,  
**ECS SOUTHEAST, LLP**



Blake Morris, P.E.  
Group Manager  
[bmorris1@ecslimited.com](mailto:bmorris1@ecslimited.com)



Mark Luskin, P.E., P.G.  
Vice President/ Principal Engineer  
[mluskin@ecslimited.com](mailto:mluskin@ecslimited.com)

Enclosures:      Cost Estimate  
                     ECS Fee Schedule  
                     Proposal Acceptance Form  
                     ECS Terms and Conditions of Service

FEE ESTIMATE										
CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTION SERVICES										
New City Hall - Ashland City, TN										
ECS Proposal No. 26:11688										
Field Services:				Quantity		Unit Rate		Cost		
Field Technician:										
Earthwork:										
Earthwork/ Structural Fill / Proofroll				8 visits	@	8 hours/visit	64 hours	@	\$65.00 / hour	\$4,160.00
Retaining Wall Observations				10 visits	@	8 hours/visit	80 hours	@	\$65.00 / hour	\$5,200.00
Building Construction:										
Foundations (Bearing, Reinforcing Steel, Concrete)				8 visits	@	4 hours/visit	32 hours	@	\$65.00 / hour	\$2,080.00
Slab-on-Grade Concrete (Reinforcing Steel and Concrete)				2 visits	@	8 hours/visit	16 hours	@	\$65.00 / hour	\$1,040.00
Storm Shelter Roof Slab				1 visits	@	8 hours/visit	8 hours	@	\$65.00 / hour	\$520.00
Structural Masonry				6 visits	@	4 hours/visit	24 hours	@	\$65.00 / hour	\$1,560.00
Structural Steel				2 visits	@	4 hours/visit	8 hours	@	\$115.00 / hour	\$920.00
Wood Framing				4 visits	@	4 hours/visit	16 hours	@	\$115.00 / hour	\$1,840.00
Misc. Concrete				4 visits	@	4 hours/visit	16 hours	@	\$65.00 / hour	\$1,040.00
Project Manager:										
Construction Meetings/ Site Visits				2 visits	@	4 hours/visit	8 hours	@	\$135.00 / hour	\$1,080.00
Daily Vehicle/ Trip:				47 visits				@	\$45.00 / r. trip	\$2,115.00
Field Services Subtotal:										\$21,555.00
Laboratory Testing:										
							2 samples	@	\$185.00 / sample	\$370.00
Atterberg Limits:							2 samples	@	\$90.00 / sample	\$180.00
Compressive Strength of Mortar Cubes:							36 cubes	@	\$17.00 / cube	\$612.00
Compressive Strength of Grout Prisms:							24 prisms	@	\$30.00 / prism	\$720.00
Compressive Strength of Concrete Cylinders:							170 cylinders	@	\$17.00 / cylinder	\$2,890.00
Laboratory Testing Subtotal:										\$4,772.00
Equipment Expenses:										
Nuclear Density Gauge							8 day(s)	@	\$40.00 / day	\$320.00
Daily Equipment Charge							32 day(s)	@	\$30.00 / day	\$960.00
Equipment Expenses Subtotal:										\$1,280.00
Project Management/ Report Review:										
Principal Engineer:				45 reports	@	0.25 hours/report	11.25 hours	@	\$225.00 / hour	\$2,531.25
Project Manager:				45 reports	@	0.50 hours/report	22.5 hours	@	\$135.00 / hour	\$3,037.50
Administrative Support:				45 reports	@	0.25 hours/report	11.25 hours	@	\$75.00 / hour	\$843.75
Project Management Subtotal:										\$6,412.50
ESTIMATED TOTAL COST:										\$34,019.50
ADDITIONAL PAVEMENT AND SITE WORK										
Basestone (Proofroll / Densities)				5 visits	@	4 hours/visit	20 hours	@	\$65.00 / hour	\$1,300.00
Asphalt Pavement Base Course				4 visits	@	8 hours/visit	32 hours	@	\$65.00 / hour	\$2,080.00
Asphalt Surface Placement				4 visits	@	8 hours/visit	32 hours	@	\$65.00 / hour	\$2,080.00
Misc Concrete (Dumpster Pad, Pavement, Etc.)				4 visits	@	4 hours/visit	16 hours	@	\$65.00 / hour	\$1,040.00
Daily Vehicle/ Trip:				17 visits				@	\$45.00 / r. trip	\$765.00
Field Services Subtotal:										\$7,265.00
Laboratory Testing:										
Compressive Strength of Concrete Cylinders:							30 cylinders	@	\$17.00 / cylinder	\$510.00
Laboratory Testing Subtotal:										\$510.00
Equipment Expenses:										
Nuclear Density Gauge							13 day(s)	@	\$40.00 / day	\$520.00
Daily Equipment Charge							4 day(s)	@	\$30.00 / day	\$120.00
Equipment Expenses Subtotal:										\$520.00
Project Management/ Report Review:										
Principal Engineer:				17 reports	@	0.25 hours/report	4.25 hours	@	\$225.00 / hour	\$956.25
Project Manager:				17 reports	@	0.50 hours/report	8.5 hours	@	\$135.00 / hour	\$1,147.50
Administrative Support:				17 reports	@	0.25 hours/report	4.25 hours	@	\$75.00 / hour	\$318.75
Project Management Subtotal:										\$2,422.50
ADDITIONAL PAVEMENT/SITE WORK ESTIMATED TOTAL COST:										\$10,717.50

2023 ECS SOUTHEAST, LLP  
NEW CIT HALL  
Ashland City, Tennessee  
ECS Proposal No. 26:11688

Principal Engineer .....	\$225.00/hour
Senior Engineer/Dept. Manager .....	\$150.00/hour
Project Manager .....	\$135.00/hour
Welding Technician, Shop or Field Inspection (**):	
Senior Level AWS CWI (NDE: UT, MT, PT, RI) .....	\$115.00/hour
AWS CWI (VT with no NDE) .....	\$115.00/hour
Field Engineer (**) .....	\$95.00/hour
Engineering Technician (**) .....	\$65.00/hour
Administrative Support.....	\$75.00/hour
Trip Charge .....	\$45.00/trip

Note: Charges for engineering and technical personnel will be made for time spent in the field, in engineering analysis, in preparation of reports, and in travel portal to portal from our office. There will be a trip charge in lieu of mileage. For scheduling requests received without sufficient notice as stated within the ECS proposal, services will be staffed with available personnel at the associated unit rates.

(\*\*) = Overtime = Standard Rate x 1.50 for over 8 hours per day and outside normal business hours of 6:00am to 6:00pm, holiday, Saturday, or Sunday. There will be a 4-hour minimum field charge for field related services (not applied to sample/specimen pickups).

**EQUIPMENT and LABORATORY**

Core machine .....	\$125.00/day
Daily Equipment Charge .....	\$30.00/day
Nuclear Density Gauge Charge .....	\$40.00/day
Ultrasonic Equipment .....	\$100.00/day
Floor Flatness/Levelness Meter .....	\$100.00/day
Photoionization Detector (PID) .....	\$100.00/day
Windsor Probe Gun .....	\$100.00/day
Windsor Probe Shots .....	\$15.00/shot
Standard Proctor (ASTM D-698) .....	\$185.00 each
Modified Proctor (ASTM D-1557) 4 inch mold.....	\$190.00 each
One-Point Proctor (AASHTO T272) .....	\$45.00 each
Dry Sieve Analysis of Granular Material .....	\$60.00 each
Hand Auger Borings .....	\$8.00/per foot
Atterberg Limits Testing .....	\$90.00 each
California Bearing Ratio (CBR) .....	\$400.00 each
Wash No. 200 Sieve .....	\$30.00 each
Testing of Cylinders, Cubes and Core Specimens:	
Compressive strength of grout cubes.....	\$ 17.00 each
Compressive strength of concrete cylinders including reserves, (ASTM C-39) .....	\$ 17.00 each
Core Specimen (including sample preparation).....	\$ 35.00/test
Compressive Strength of grout prisms (3.5"x3.5"x7") .....	\$ 30.00 each
Compressive strength of mortar cubes .....	\$ 17.00 each
Closeout Letter .....	\$ 200.00 each

Note: The above charges will be made for tests and equipment operated by ECS Southeast, LLP personnel in addition to personnel charges already listed.

**PROPOSAL ACCEPTANCE FORM  
ECS SOUTHEAST, LLP**

Project Name: New City Hall  
Location: Ashland City, Tennessee

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.

Base Scope of Services (Time and Materials): Estimated at \$34,019.50 Approved\_\_\_\_\_

Alternate Scope - Site Work and Pavements: Estimated at \$10,717.50 Approved\_\_\_\_\_

Alternate Scope - EPSC Inspections (twice weekly): \$250/visit Approved\_\_\_\_\_

Client Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CLIENT AND BILLING INFORMATION**

Name of Client: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Responsible for Payment**

**Approval of Invoice (if different)**

Contact Name:	_____	_____
Company Name:	_____	_____
Address	_____	_____
City, State, Zip	_____	_____
Telephone No.:	_____	_____
E-mail Address:	_____	_____

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
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Instructions: \_\_\_\_\_



## ECS Southeast, LLP TERMS AND CONDITIONS OF SERVICE

The professional services ("Services") to be provided by ECS Southeast, LLP ("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 and/or CLIENT'S contractors and consultants. 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 any 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 may 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 Subcontractors. 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.