

May 10, 2023  
Proposal No. PC23.104

Ms. Marisa Hewitt, PE  
California Engineering Company, Inc.  
1110 Civic Center Drive, Suite 404  
Yuba City, California 95993  
Email: [mhewitt@cecusa.net](mailto:mhewitt@cecusa.net)

**REFERENCE: Proposed City of Colusa WWTP Infrastructure Improvements**  
1480 & 2820 Will S. Green Avenue (APNs: 002-090-001 & 017-020-007)  
Colusa, Colusa County, California

**SUBJECT: Proposal for Geotechnical Engineering Services**

Dear Ms. Hewitt,

As requested, NV5 prepared this proposal to provide geotechnical engineering services for the development of the above-referenced sewer infrastructure project. As part of the geotechnical engineering services, NV5 will perform the appropriate geotechnical engineering investigation in accordance with the requirements of the 2022 California Building Code (CBC) guidelines and prepare a geotechnical engineering investigation report that presents the findings, conclusions and recommendations for the specific structural improvements.

NV5 has previously performed a site investigation and provided geotechnical recommendations for the City of Colusa Waste Water Treatment Plan System as documented in the *Geotechnical Engineering Investigation Report* dated June 2, 2015, Project No. 70508-01, prepared by (Holdrege & Kull (H&K) (now doing business as NV5). NV5 will utilize the findings, conclusions, and recommendations that remain relevant and applicable in the report to these proposed sewer infrastructure improvements. The following presents our understanding of the project and our proposed geotechnical engineering services.

## **1.0 PROJECT DESCRIPTION**

Based on recent correspondence and review of the March 8, 2023, *Key Map* and April 10, 2023, *Site Piping Plan*, both prepared by NexGen Utility Management, NV5 understands the proposed City of Colusa Sewer Infrastructure project will consist of construction of a Wet Well, a Control Building, a Maintenance Building, Concrete Lined Aeration and Chlorine Basins, and a Solid Stabilization Basin Geomembrane Liner. The improvements are proposed be constructed at the existing City of Colusa Wastewater Treatment Plant. NV5 understands the proposed maintenance and control buildings will be single-story wood and/or light-gauge steel framed buildings supported on shallow continuous spread and isolated foundations, with an interior concrete slab-on-grade floor.

Associated site improvements may include construction of asphalt concrete and rigid concrete pavements, underground utilities, and landscaping. Earthwork grading may include general site clearing/preparation and minor cuts and fills required to balance the site to meet the proposed building grades.

## **2.0 SCOPE OF SERVICES**

Based on our understanding of the proposed site improvements and our knowledge of the local geologic conditions, NV5 is proposing the following scope of services. The subsurface exploration will utilize a truck-mounted drill rig to advance exploratory borings. Utilizing the borings, NV5 will collect the necessary subsurface soil samples for foundation recommendations and meet the requirements of Chapter 18 of the 2022 CBC.

NV5 proposes to perform the following tasks as basic geotechnical engineering services with no other additional services included: Task 1 Site Investigation and Laboratory Testing, Task 2 Data Analysis and Engineering Design, Task 3 Report Preparation, Task 4 Final Design Plan Review, and Task 5 Construction Quality Control Testing and Inspection Services. Each task is described in the following:

### **2.1 TASK 1. SITE INVESTIGATION AND LABORATORY TESTING**

NV5 will perform a site investigation using a truck-mounted drill rig to characterize the soil, rock and groundwater conditions encountered at the surface and beneath the site. The site investigation will provide the basis for geotechnical engineering design recommendations for earthwork and structural improvements. The site investigation includes the following components, which are described below: Literature Review and Surface Reconnaissance Investigation, Subsurface Investigation, and Laboratory Testing. These surface and subsurface investigations do not include the evaluation of the site for the presence of hazardous waste materials and/or groundwater pollutants.

#### **2.1.1 Literature Review and Surface Reconnaissance Investigation**

NV5 will perform a literature review of available geologic and engineering documents and a surface reconnaissance of the project site to identify surface conditions that may impact the proposed site development plans. In general, NV5's field engineer/geologist will observe and describe surface exposures of the following existing site conditions:

- Site and surrounding land uses.
- Surface soil conditions.
- Existing site improvements including earthwork grading and structures.
- Site topography and drainage.
- Vegetation.

#### **2.1.2 Subsurface Investigation**

A minimum of 48 hours prior to performing the subsurface investigation NV5 will mark the proposed subsurface exploratory locations with white paint and notify Underground Services Alert (USA) as required by California state law. USA members will inspect each proposed

subsurface exploratory location to determine if any underground utilities are present at these locations. The property owner is responsible for marking all known utilities within the proposed excavation areas inside the subject property. If USA identifies the presence of underground utilities at any of the proposed exploratory locations, then we will move the excavation location to an area that is clear of underground utilities. A utility line locating firm may be utilized to identify utility line locations, if appropriate, at an additional cost.

NV5 will perform a subsurface investigation to obtain an understanding of the soil, rock and groundwater conditions underlying the sites of the proposed medical office-building to the maximum depth explored. Five (5) exploratory borings will be advanced within the areas of the proposed structures and infrastructure improvements using a truck-mounted drill rig. Exploratory borings performed in the areas of the proposed maintenance building, concrete lined aeration basin, concrete chlorine contact basin, and solid stabilization basin geomembrane liner will be advanced up to a maximum depth of approximately 10 to 15 feet below the existing surface, or until refusal is encountered, whichever is first. The exploratory boring performed in the area of the proposed wet well will be advanced up to a maximum depth of approximately 35 feet below the existing surface, or until refusal is encountered, whichever is first. If the groundwater table is encountered, the depth to groundwater below the existing ground surface will be measured. Additional borings may be advanced across the site to provide adequate coverage for assessing the geologic conditions beneath the site, if deemed appropriate by the field engineer/geologist. Each exploratory boring will be backfilled immediately after logging and sampling activities are completed in accordance with Colusa County Environmental Health requirements. Excess drill cuttings (soil) will be stockpiled or spread out onsite.

NV5's field engineer/geologist will collect both relatively undisturbed and disturbed soil samples from each exploratory boring. Where feasible, relatively undisturbed soil samples will be collected with a standard penetration test (SPT) sampler and 2.5-inch-diameter (inside diameter) split-spoon barrel sampler equipped with brass/steel liner tubes. Generally, soil samples will be collected at depths determined by our field engineer/geologist based on geologic conditions encountered. Additional soil samples may be collected and/or the sample intervals may be changed depending upon the soil conditions encountered. The soil samples will be labeled, sealed, and transported to our laboratory facility where selected samples will be tested to determine their engineering material properties.

### **2.1.3 Laboratory Testing**

NV5 will perform laboratory tests on selected soil samples to determine their engineering material properties. All laboratory tests will be performed consistent with the guidelines of the ASTM International (ASTM). The ASTM soil characterization tests may include:

- D422, Particle Size Distribution, Sieve and Hydrometer Analysis
- D2166, Unconfined Compressive Shear Strength
- D2487 & D2488, Unified Soil Classification System, Description Visual Method
- D2937 & D2216, Density and Moisture Content

- D2850, Unconsolidated, Undrained Triaxial Compressive Strength
- D4318, Atterberg Plasticity Indices
- D4829, Expansion Index

If soil is encountered with a high potential for volume change (i.e., expansion or consolidation), then NV5 may recommend additional laboratory testing to evaluate expansion or consolidation impacts and provide appropriate recommendations on the proposed earthwork and structural improvements. Additional testing may include ASTM D2435 one-dimensional consolidation, ASTM D4546 one-dimensional swell, and ASTM D4767 consolidated-undrained triaxial shear strength. The costs to perform these additional tests are not included in the fee estimate presented herein. NV5 will not perform these additional tests without written authorization to proceed and a budget augmentation to cover the cost of performing these additional laboratory tests.

## **2.2 TASK 2. DATA ANALYSIS AND ENGINEERING DESIGN**

NV5 will use the state-of-the-practice geotechnical engineering analyses methods to evaluate the on-site soil properties. These analyses methods may include but will not be limited to the following:

### **2.2.1. Data Analysis Methods**

- Soil and rock stratigraphy.
- Soil bearing capacity for shallow and/or deep foundations.
- Lateral earth pressures.
- Soil-Concrete friction coefficients.
- Soil shear strength.
- Soil plasticity indices.
- Soil expansion potential.
- Soil corrosion potential.
- Building and surcharge loads.
- Groundwater seepage and drainage controls.

NV5 will develop geotechnical engineering design recommendations for earthwork and structural improvements and provide applicable recommendations. The geotechnical engineering design recommendations may include but not be limited to the following:

### **2.2.2 Earthwork Improvement Recommendations**

- Site clearing and soil subgrade preparation.
- Exclusion of oversize fill soil materials.
- Aerial fill moisture conditioning and compaction requirements.

- Fill soil loose lift (layer) thickness requirements.
- Utility trench backfill material placement and compaction requirements.
- Retaining wall backfill material specifications.
- Retaining wall drainage.
- Surface water drainage.
- Expansive soil mitigation (not including lime, flyash or cement treatment details).
- Temporary construction dewatering methods.
- Subdrain systems (if necessary).

### **2.2.3 Structural Improvements**

- Shallow/Deep foundation types, dimensions and embedment depths.
- Shallow/Deep foundation soil bearing capacity pressures.
- Foundation-soil sliding friction coefficients.
- Design criteria for retaining walls.
- Concrete slab-on-grade floors.
- Design criteria for roads and parking lot area asphalt concrete pavement.
- Seismic (earthquake shaking) design parameters.

## **2.3 TASK 3. REPORT PREPARATION**

NV5 will prepare a geotechnical engineering investigation report that will present our findings. The geotechnical engineering investigation report will meet the requirements of the 2022 CBC, and the accepted geotechnical engineering principles and practices performed in California. The report will include descriptions of the site conditions, field investigation, laboratory testing and geotechnical engineering design recommendations for the proposed earthwork and structural improvements. NV5 will deliver the final report as an electronic Portable Document Format (PDF) for distribution to the design team and building officials. The report will be signed and stamped by the California professional engineer (PE) in responsible charge of this project.

## **2.4 TASK 4. FINAL DESIGN PLAN REVIEW (BUDGET TO BE DETERMINED)**

NV5 will review the final earthwork grading and foundation improvement plans and project specifications prior to commencement of construction to determine whether our geotechnical engineering recommendations have been implemented, and if necessary, to provide additional and/or modified recommendations. The cost associated with performing final plan review is not included herein. NV5 can prepare a contract cost amendment to include these services once the need and required effort have been determined.

## **2.5 TASK 5. CONSTRUCTION QUALITY ASSURANCE TESTING AND INSPECTION SERVICES (BUDGET TO BE DETERMINED)**

NV5 proposes to perform construction quality assurance (CQA) monitoring of the earthwork grading performed by the construction contractor. As part of our CQA services, NV5's professional engineer will oversee and certify the earthwork grading in accordance with the plans, specifications and recommendations provided in the geotechnical engineering report. In addition, NV5 can provide special inspection services related to reinforced concrete placement and sampling, CMU construction, structural steel shop and field welding, high strength bolt testing, spray applied fireproofing, post installed concrete anchors, and more. The cost associated with performing CQA and special inspection services are not included herein. NV5 can prepare a contract cost amendment to include these services following approval of the final plans and specification and selection of a construction contractor.

## **3.0 SCHEDULE**

NV5's proposed work schedule is based on our present and expected workload. NV5 is prepared to commence work on this project following receipt of a signed contract and notice to proceed. The site investigation will be executed within two to three weeks following receipt of the notice to proceed, utility clearance, weather permitting, permit acquisition, drill rig availability and site access permitting. NV5 estimates that the final report can be completed within three weeks following completion of the site investigation.

The time required to complete our geotechnical investigation field work may be increased as a result of encountering unforeseen subsurface conditions, adverse weather conditions, soil stability, or property access problems.

## **4.0 FEE**

NV5 proposes to perform the geotechnical engineering services proposed in Tasks 1 through 3 above for a lump sum fee of \$13,963.95, in accordance with the attached NV5 Agreement for Construction Quality Assurance and Geotechnical Services terms and conditions. This fee includes the cost of the truck-mounted drill rig and operating crew. Full payment is due upon completion of the work and issuance of the report. This proposal cost estimate is valid for a period of 60 days from the date of issue.

This cost estimate may require modification if unusual or unexpected site conditions are encountered which significantly change the work scope and increase the associated costs, or if the client requests an expansion of the work scope, or if Colusa County requires the purchase of any additional permits in order to complete the site investigation. NV5 will not perform additional work outside the scope of services presented above until a written authorization to proceed and an approved budget augmentation are received. This proposal cost estimate is valid for a period of 60 days from the date of issue.



## 5.0 CONTRACT AGREEMENT

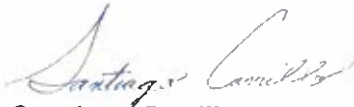
Please sign the attached NV5 Agreement for Construction Quality Assurance and Geotechnical Services contract to indicate your acceptance of this proposed work scope, schedule and fee estimate. Your signature indicates that you accept the terms and conditions of this contract agreement and is a written authorization for us to proceed with the work scope presented in this proposal. Please email the signed contract agreement to Dominic Potestio at [dominic.potestio@nv5.com](mailto:dominic.potestio@nv5.com), or deliver a copy to our office. Upon its receipt, NV5 will sign and issue the fully-executed contract agreement.

## 6.0 CLOSING

NV5 appreciates the opportunity to provide you with a proposal on this important project. If you have questions or comments, please do not hesitate to contact the undersigned at (530) 894-2487.

Sincerely,

NV5



Santiago Carrillo  
Staff Engineer



Dominic J. Potestio, PE  
Senior Engineer

Attachments:

1. NV5 Agreement for Construction Quality Assurance and Geotechnical Services



## AGREEMENT FOR CONSTRUCTION QUALITY ASSURANCE AND GEOTECHNICAL SERVICES

**THIS AGREEMENT**, effective as of this \_\_\_\_\_ day of \_\_\_\_\_ 2023, is by and between California Engineering Company ("Client") and NV5, Inc ("Company").

**THE PROJECT** is generally described as: Proposed City of Colusa WWTP Infrastructure Improvements and is located at 1480 & 2820 Will S. Green Avenue, Colusa, California ("Project Site").

**THIS AGREEMENT** consists of the following documents which are incorporated herein by reference:

- GENERAL TERMS AND CONDITIONS; and
- Company's PROPOSAL PC23.104 dated May 10, 2023 and FEE SCHEDULE; and
- Any documents specifically listed below or incorporated by reference in the listed documents.

N/A
N/A
N/A

Company agrees to perform the Services set forth in this Agreement and in accordance with its terms and limitations, including all attachments incorporated herein by reference. This Agreement may not be modified or altered, except in writing as specifically described in this Agreement.

### CLIENT:

### ENGINEER:

Signature:	_____	_____
Print Name:	_____	Shane D. Cummings
Title:	_____	Director NorCal CQA- Geotechnical
Company:	_____	NV5, Inc.
Street Address:	_____	48 Bellarmine Court, Suite 40
City, State, Zip Code:	_____	Chico, CA 95928
Email:	_____	Shane.Cummings@NV5.com
Phone:	_____	530.894.2487
Date:	_____	_____



## **GENERAL TERMS AND CONDITIONS**

**1. The Agreement.** This Agreement between the parties, which shall describe and govern Client's engagement of "Consultant" to provide services ("Services") in connection with the project ("Project") identified in the proposal ("Proposal"), consists of the Proposal, these terms and conditions, Consultant's fee schedule, and any exhibits or attachments referenced in any of these documents. Together these elements constitute the entire agreement between the parties, superseding any and all prior negotiations, correspondence, or agreements, either written or oral, with respect to the subject matter of this engagement. This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party. Consultant requests written acceptance of the Agreement through its Proposal Acceptance Form, but the following actions shall also constitute Client's acceptance of the Agreement: (1) issuing an authorizing purchase order for any of the Services; (2) authorizing Consultant's presence on site; or (3) notification, written (including e-mail) or oral, to Consultant to proceed with any of the Services.

**2. Standard of Care.** The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project. Data, interpretations and recommendations by Consultant will be based solely on information discovered by, or made available to, consultant during the course of the engagement. In connection with such information, Consultant shall not be responsible for the use or interpretation of such information by non-parties to this Agreement. Consultant shall not be held liable for problems that may occur if Consultant's recommendations are not followed.

**3. Billing and Payment.** Client shall pay Consultant in accordance with the schedule of fees or charges as shown in the Proposal or fee schedule. Backup data on billing will not be available unless prior arrangements have been made. Prior to initiation of the Services, Client is required to remit any retainer specified in the Proposal. Thereafter, Consultant will submit to Client invoices for the balance due, which shall be due and payable immediately upon submission. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received when due. In such event, Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Consultant reserves the right to withhold all reports or deliverables and suspend any and all services unless and until payment is made by Client in accordance with this Agreement. Fee schedules are periodically revised. Unless otherwise agreed, new rates apply to ongoing work as such rates are issued.

**4. Site Access and Conditions.** Client will provide Consultant access to the Project site for all equipment and personnel necessary for the performance of the Services. As required to effectuate such access, Client will notify all owners, lessees, contractors, subcontractors, and other possessors of the Project site that Consultant must be allowed free access to the site. While Consultant agrees to take reasonable precautions to minimize damage to the site, Client understands that, in the normal course of performing the Services, some damage may occur, and further understands that Consultant is not responsible for the correction of any such damage unless so specified in the Proposal. Client is responsible for the accuracy of locations for all subterranean structures and utilities. Consultant will take reasonable precautions to avoid known subterranean structures and utilities, and Client waives any claim against Consultant, and agrees to defend, indemnify, and hold Consultant harmless from any claim or liability for injury or loss of any party, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim with compensation to be based upon Consultant's prevailing fee schedule and expense reimbursement policy.

**5. Cooperation and Project Understanding.** To the extent requested by Consultant, Client will make available to Consultant all information in its possession regarding existing and proposed conditions at the site. Such information shall include, but not be limited to engineering reports, plot plans, topographic surveys, hydrographic data, soil data including borings, field and laboratory tests and written reports. Client shall immediately transmit to Consultant any new information concerning site condition which becomes available, and any change in plans or specifications concerning the Project to the extent such information may affect Consultant's performance of the Services. Client agrees, upon 24 hours oral or written notice, to provide a representative at the job site to supervise and coordinate the Services. Consultant shall not be liable for any inaccurate or incorrect advice, judgment or decision which is based on any inaccurate information furnished by Client and Client shall indemnify Consultant against claims, demands, or liability arising out of, or contributed to, by such inaccurate information.

**6. Sample Disposal.** Unless other arrangements are made, Consultant will dispose of all samples remaining at the time of report completion. Further storage or transfer of samples can be arranged at Client's prior written request, subject to a reasonable charge by Consultant. Client acknowledges that contaminated samples may be produced as a result of encountering hazardous materials at the site. In such event, Consultant shall properly contain, label, and store such materials on-site, and Client shall be responsible for its proper transportation and disposal. Consultant may be able to arrange for the transportation and disposal of hazardous materials at Client's request.

**7. Construction Monitoring.** If Consultant is engaged by Client to provide a site representative for the purpose of monitoring specific portions of any construction work, as set forth in the Proposal, then this Section 7 shall apply. If Consultant's engagement does not include such construction monitoring, then this Section shall be null and void. In connection with construction monitoring, Consultant will report observations and professional opinions to Client. Consultant shall report to Client any observed work which, in Consultant's opinion, does not conform to plans and specifications. Consultant shall have no authority to reject or terminate the work of any agent or contractor of Client. No action, statements, or communications of Consultant, or Consultant's site representative, can be construed as modifying any agreement between Client and others. Consultant's presence on the Project site in no way guarantees the completion or quality of the performance of the work of any party retained by Client to provide construction related services. Neither the professional activities of Consultant, nor the presence of Consultant or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon Consultant any responsibility for methods of work performance, superintendence, sequencing of construction, or safety conditions at the Project site. Client acknowledges that Client its general contractor or construction manager is solely responsible for job site safety, and warrants and agrees that such responsibility shall be made evident in any Project owner's agreement with the general contractor. Client also agrees to

make Consultant an additional insured under any general contractor's general liability insurance policy. Prior to the commencement of the Work, Client shall provide Consultant with a certificate of insurance evidencing the required insurance. Such certificates shall be issued by an insurance carrier(s) acceptable to Consultant and shall be endorsed to include: (1) Consultant as additional insured; and (2) a waiver of subrogation as to Consultant. This insurance shall be primary to any insurance available to Consultant. In the event Consultant expressly assumes any health and safety responsibilities for hazardous materials or other items specified in this Agreement, the acceptance of such responsibility does not and shall not be deemed an acceptance of responsibility for any other health and safety requirements, such as, but not limited to, those relating to excavation, trenching, drilling or backfilling.

**8. Project Changes.** In the event Client, the Project owner, or other party makes any changes in the plans and specifications, Client agrees to hold Consultant harmless from any liability arising out of such changes, and Client assumes full responsibility unless Client has given Consultant prior notice and has received Consultant's written consent for such changes.

**9. Discovery of Unanticipated Hazardous Materials.** Client warrants that it has made reasonable efforts to inform Consultant of known or suspected hazardous materials on or near the Project site. The parties acknowledge that hazardous materials may exist at a site where there is no reason to believe they are present. Consultant and Client agree that the discovery of such unanticipated hazardous materials constitutes a changed condition which may require either a re-negotiation of the scope of Consultant's Services or termination of such Services or this Agreement. Consultant agrees to notify Client as soon as practicable should hazardous materials be encountered at the site. Client agrees that in the event of the discovery of hazardous materials at the site it will report such discovery to the proper authorities as required by Federal, State, and local regulations. Client agrees to make the required report at the recommendation of Consultant, or, if unable to do so, authorizes Consultant to make such report. Client also agrees to inform the Project site owner in the event that hazardous materials are encountered at the site. Notwithstanding any other provision of this Agreement, Client waives any claim against Consultant, and to the maximum extent permitted by law, agrees to defend, indemnify, and save Consultant harmless from any claim, liability and/or defense costs for injury or loss arising from the presence of hazardous materials on the project site, including any costs created by delay of the project and any costs associated with possible reduction of the property's value. Client is responsible for ultimate disposal of any samples secured by Consultant which are found to be contaminated.

**10. Concealed or Subsurface Conditions.** Consultant cannot know or guarantee the exact composition of a structure or site's concealed or subsurface condition, even after conducting a comprehensive exploratory program. Client acknowledges that there is a risk that exploratory destructive testing, drilling and sampling may result in damage or contamination of certain areas. Although Consultant will take reasonable precautions to avoid such an occurrence, Client waives any claim against, and agrees to defend, indemnify and save Consultant harmless from any claim or liability for injury or loss which may arise as a result of any exploratory activities. Client also agrees to adequately compensate Consultant for any time spent and expenses incurred in defense of any such claim.

**11. Risk Allocation and Limitation of Liability.** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Client and anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant, for Services provided under this Agreement or \$50,000 whichever is more. Client agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

**12. Limitations.** Consultant's reports are prepared for Client and their client, and are not transferrable or assignable. The provisions of Consultant's reports does not imply that we are providing expert testimony for any litigation including answering interrogatories, answering questions in depositions, attending depositions, preparing exhibits for trial, providing expert testimony, or other litigation related services unless otherwise expressly stated in our service agreement. Consultant's reports shall not guarantee in any way the viability or safety of any structure, does not relieve the property owner of the responsibility for making repairs to the property, nor does Consultant's report relieve the property owner of the responsibility for ensuring that their building meets all applicable building codes or laws.

**13. Delays.** Consultant shall not be liable to Client for delays. Client shall indemnify, defend, and hold harmless Consultant from any actions or claims arising from delays.

**14. Termination.** This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, Consultant will be paid for services performed through the date of termination, plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

**15. Intellectual Property & Work Product.** (i) All processes, procedures, work product, materials, methodologies or services used or provided by CONSULTANT in connection with this Project was, shall remain, or will always be, the intellectual property of CONSULTANT. Nothing in this Agreement shall operate as a waiver of ownership or a sale of ownership of any CONSULTANT intellectual property. (ii) Client represents and warrants that Client owns and/or has the right to use the intellectual property that is contained in any instrument, report, media, drawing, design, submittal, or document that Client provides to CONSULTANT in connection with the Project, and that said Client-provided document does not and shall not infringe, misappropriate, or violate the intellectual property rights of any third-parties (iii) All documents including reports, electronic media, and drawings, prepared or furnished by CONSULTANT and its subconsultants pursuant to this Agreement are instruments of service in respect of this Project and CONSULTANT will retain an ownership and property interest therein whether or not the Project is completed. The Client may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by the Client, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than the Client. Accordingly, the Client will, to its fullest extent permitted by law, defend, indemnify and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from any unauthorized reuse

of the documents or disbursement by Client to third parties. If it is necessary to distribute any documents to an unrelated third party, both the third party and Client agree: (a) the third party is bound by all of the conditions and limitations of this Agreement and related documents; and (b) the third party is bound by all limitations of liability or indemnity provisions..

**16. Resolution of Disputes.** The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant, unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the same State. This certification shall: (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. Any cause of action brought against Consultant shall be brought within one year of the work or services performed under this Agreement.

**17. Assigns.** Client may not assign this Agreement or any right or obligation hereunder without the prior written consent of Consultant, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement.

**18. Waiver of Jury Trial.** Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

**19. Liability for Others.** Consultant shall not be responsible for the acts or omissions of the Client, architect, architect's other consultants, contractor, subcontractor, other third parties or their respective agents, employees, assigns, successors, or other persons performing any of the work. Consultant shall promptly notify Client if Consultant becomes aware of any inconsistencies in the services or information provided by other parties.

**20. Governing Law and Survival.** The validity of this Agreement, these terms, their interpretation and performance shall be governed by the laws of the State in which the Project is located. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability, indemnification, and non-solicitation & hiring of employees shall survive the termination of this Agreement for any reason. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

**21. Waiver.** No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

**22. Enforceability.** This Agreement shall be interpreted by the parties in a manner that ensures this Agreement's compliance with applicable local, state, federal, or foreign laws. The parties affirm that this Agreement is a collaborative effort between Client and Consultant, with no single party considered the drafter of this Agreement or having the drafting of this document construed against them.

**23. Severability.** Should a court find one of the provisions of this Agreement unenforceable, the remaining provisions of this Agreement shall remain in full force and affect.

**24. Insurance.** Consultant shall not (1) post a bond, (2) insure, or (3) indemnify Client against losses caused from the acts or omissions of other Contractors or Subcontractors that are not under contract to perform work for Consultant. Client shall require other Contractors and Subcontractors to carry adequate insurance coverage, including such coverage for any performance for Client, to insure and indemnify Consultant against claims for damages, and to insure compliance with Project requirements, including work performance and materials.

**25. Entire Agreement.** This Agreement represents the entire agreement between the parties. No other prior written or oral representations, negotiations, or discussions are part of this agreement. To the extent allowed by law, any agreement that is a part of the scope of Consultant services and incorporated by reference into this agreement shall be subordinated to the terms and conditions of this agreement where they conflict.