



January 17, 2024

Mr. Ronald J. Wiedeman, PE
City of Crest Hill
1610 Plainfield Road
Crest Hill, Illinois 60403

ECS Proposal No. 53-6288

RE: Subsurface Environmental Assessment, Former Crest Hill City Hall, 1610 Plainfield Road, Crest Hill, Will County, Illinois 60403

Dear Mr. Wiedeman:

ECS is pleased to provide this proposal for environmental engineering services at the above referenced property. As we understand, the subject property is comprised of approximately 4.9-acre subject property parcel that is identified by the Will County Assessor as parcel numbers 11-04-31-405-006, 11-04-31-405-050, and 11-04-31-405-051, which are owned by the City of Crest Hill. The approximately 4.9-acre subject property is comprised of a vacant single-story, approximately 35,000-square foot building with mezzanine. The remaining portions of the subject property are comprised of a retention pond, unimproved land, and a paved lot for parking.

ECS performed a Phase I Environmental Site Assessment (dated December 22, 2023) on the subject property. As noted within the report, the following recognized environmental conditions (RECs) were identified on the subject property:

- A gasoline release incident was reported in 2002 following a removal of a 2,000-gallon UST. Evidence that groundwater was assessed following the reported release incident was not encountered.
- Building records and site reconnaissance indicate a 10,000-gallon oil underground storage tank (UST) may be located below or near the boiler room of the onsite building.
- The subject property was utilized as a bottling facility in 1947 until sometime between 1947 and 1976. Historical use of hazardous substances including potential chlorinated solvents may have been used and disposed onsite.
- An automotive maintenance shop was utilized onsite between the 1970s and sometime prior to 2022. The maintenance shop utilized and or stored motor oil, used oil, vehicular fluids, and operated hydraulic fluid lifts.

In an effort to assess the subject property for evidence of environmental impact, you have requested that ECS perform a subsurface investigation. Based on this, ECS proposes the following scope of work outlined in the following sections.

SCOPE OF SERVICES – SUBSURFACE ASSESSMENT

Utility Clearance. ECS requests that utility plans and related documents be provided prior to the subsurface sampling to avoid damaging underground structures. As required by state and local regulations, ECS's drilling subcontractor will also contact a public utility location service (Illinois JULIE) to clear public utility lines at the subject property prior to the start of fieldwork. However, please note that

in most cases, municipal and utility representatives will not locate utilities that are located on private property. Therefore, ECS will engage a private utility locator to identify potential on-site utilities to reduce the potential of encountering utilities during drilling activities. Please note that the cost for a private utility locate has been included in the costs.

Geophysical Exploration. The geophysical exploration will be performed in an effort to identify the location of possible underground storage tanks. ECS proposes to use a non-invasive geophysical method (ground-penetrating radar-GPR) in an effort to identify subsurface anomalies (USTs). The GPR equipment utilized will be a GSSI Utility Scan DF equipped with a 400 MHz antenna. GPR is a tool that uses radar pulses to image the subsurface. The GPR data will be collected in an effort to evaluate the presence, depth, and shape of subsurface targets.

This non-destructive method uses electromagnetic radiation in the microwave band (UHF/VHF frequencies of the radio spectrum and detects the reflected signals from subsurface structures. GPR uses high-frequency (usually polarized) radio waves which are transmitted into the ground. When the wave hits a buried object or boundary with different dielectric constants, the receiving antenna records variations in the reflected return signal. The composition of the soil through which the radar pulse is attempting to travel through and/or the presence of water are limiting factors when conducting a geophysical survey. Highly conductive soils, such as clays, can limit the penetration ability of the radar pulse. By contrast, non-conductive soils, such as sandy porous soils, can greatly increase the ability of the radar pulse to penetrate the ground. The less conductive soils offer less 'interference' or reflection of the radar pulse and thereby allow it to penetrate to greater depths. The opposite is true of highly conductive soils. Further, sub-grade debris (urban fill material or re-enforced concrete) can reflect the radar signal before it is able to achieve maximum penetration. Water is the most reflective material a radar pulse will encounter. Wet soils encountered while conducting an underground utility search are problematic and will also limit the effective depth of the scan.

Based upon review of the *Ground Penetrating Radar Soil Suitability Map of the Conterminous United States*, soils in the general area of subject property (Tazewell County, Illinois) have a moderate to low relative suitability (GPR Soil Suitability Index of approximately 3-4) with a typical penetration depth range of 1 to 6 ½ feet. However, because of variations in textural layering, mineralogy, soil water content, the ionic concentration of the groundwater, and based upon ECS' experience within Tazewell County, the depth of penetration within these soils can expect to range from 1 to approximately 8 feet.

While it is possible to locate many objects with GPR there can be objects that are simply too small for the radar to find. This limitation is most frequently experienced with low frequency antennas and specifically in reference to utility locating projects. Given the noted resolution loss, variance of soil compositions and other factors the following rule is a general guideline for locating small objects with ground penetrating radar. *"For every foot deep an object is buried it will need to be at least one (1) inch in diameter"*. In order for us to locate a utility at 4' (48") deep the pipe would need to be at least 4" in diameter.

Please be advised that the presence of cars and other metallic objects will interfere with the geophysical equipment. As such, the subject property will need to be cleared for approximately one day while the geophysical exploration is being performed. Please note that GPR services cannot be provided in wet conditions, especially standing water.

ECS will perform in-field interpretation of geophysical results. Additionally, information obtained during the performance of the geophysical exploration will be summarized within our report. The report will contain methodologies and procedures utilized to perform the work, graphics, and field data. The report will also contain figures identifying the location of subsurface anomalies encountered on the subject property (if any).

Soil, Groundwater, and Soil/Gas Sampling. To assess current environmental subsurface conditions at the subject property, ECS proposes to install up to 10 soil borings. The soil borings will be advanced with a Geoprobe to a depth of approximately 15 feet bgs, or to groundwater or bedrock, whatever is shallower. The Geoprobe borings will be advanced continuously from the ground surface to the bottom of each boring by pushing a 2-inch diameter by 5-foot-long hollow-barreled sampler into/through the soil. Soil samples will be collected in dedicated, disposable plastic liners contained in the sampler. Following sample collection, the probe holes will be backfilled with granular bentonite and hydrated in-place. All drilling equipment, including the sampling rods, will also be decontaminated prior to sampling and in between boring locations.

Soil samples will be screened in the field for chemical odors, evidence of staining or other visible indications of chemical release, and volatile organic emissions using a photoionization detector (PID). Soil samples that exhibit the most severe evidence of chemical release, if encountered, will be submitted for chemical analysis. In the absence of indications of chemical release, one representative sample of the unsaturated soils of each of the borings will be submitted for analysis.

In addition, four temporary 1-inch monitoring wells will be installed within soil borings to a depth of approximately 15 feet. Analysis of groundwater “grab” samples provides a broad indicator of the presence, absence, and relative severity of chemicals of concern in the subsurface, if any. Please note that if groundwater is not encountered, a deeper soil sample will be collected in lieu of a groundwater sample.

ECS also proposes to install four temporary soil/gas monitoring location and collect four soil/gas samples directly from on-site shallow soils in order to address the indoor inhalation exposure pathway. The soil/gas samples will be collected from depths between 3 feet bgs and groundwater.

Sample Handling. Following sample collection, the soil and groundwater samples will be placed in clean sampling media supplied by the analytical laboratory. The soil sample jars/vials will be filled as completely as possible to minimize headspace; the jars/vials will then be labeled and placed in a chilled cooler for transport to the analytical laboratory. Standard chain of custody protocols will be maintained throughout the sample handling process.

Lithologic Description. Soil samples will be logged continuously from ground surface to the bottom of each boring for lithologic description. An experienced ECS geologist or engineer will document the subsurface conditions (soil type, PID measurements, the presence of staining, odors and groundwater levels, etc.) in each boring.

Equipment Decontamination. Prior to use at each boring, all downhole sampling equipment will be cleaned using an Alconox® wash and rinsed with potable water.

Soil, Groundwater, and Soil/Gas Analysis. ECS proposes that samples will be analyzed for the following:

Number of Samples	Analytical Parameters
Soil	
2 (Former 10,000-gal UST)	BTEX/MTBE, PNAs, Lead, pH
8 (Former on-site operations and 10,000-gal UST)	VOCs, SVOCs, RCRA Metals, and pH
Groundwater	
1 (Former 2,000-gal UST)	BTEX/MTBE, PNAs, Lead
3 (Former on-site operations and 10,000-gal UST)	VOCs, SVOCs, and RCRA Metals
Soil/Gas	
4	VOCs

BTEXs/VOCs - Volatile organic compounds via Method 8260B, TO-15 (air)

PNAs – Polynuclear Aromatics via Method 8270D

SVOCs – Semivolatile Organic Compounds via Method 8270D

RCRA Metals – via Method 6010B/7471B/9012

pH – via Method 9045

The soil, groundwater, and soil/gas analysis will be performed by an Illinois EPA accredited analytical laboratory; the analyses will be performed on a standard (7-10 business day) turn around basis, unless otherwise requested.

Data Evaluation and Report Preparation.

Based on the current and proposed property usage, ECS will compare the soil data to the remedial objectives for residential properties as cited in 35 Illinois Administrative Code 742 (35 IAC 742): *Tiered Approach to Corrective Action Objectives* (TACO) for the contaminants of concern. These comparisons will be used to gauge the relative severity of chemical impacts, if any.

Upon receipt of the laboratory data, ECS will prepare a report presenting the results of the assessment. The report will include a description of the rationale for all conclusions relative to Illinois regulations and recommendations for additional work, if warranted. The report will also include a site plan showing the location of the borings, the results of the analytical analysis summarized in data tables, copies of the laboratory reports and a description of our field protocols.

Project Management. Project management includes discussions with task managers, scheduling and coordination of field work, subcontractor procurement, interaction with client, budget tracking, laboratory interface, and related activities.

SCHEDULE

Fieldwork can be scheduled following receipt of written authorization to proceed. We anticipate that the fieldwork can be completed in one day. The sample analysis will be performed on a standard (7-10 business day) turnaround basis. ECS will provide a verbal report of the findings following receipt of the laboratory data; we anticipate that a written report will be provided approximately 1 week following receipt of laboratory data. This schedule is largely dependent on subcontractor participation. This schedule also

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assumes that ECS will have timely access to the subject property and that the work will not be delayed by inclement weather.

Your acceptance of this proposal may be indicated by signing and returning one copy to us. Issuance of a purchase order, or other types of notices to proceed (verbal, written, or electronic) implicitly acknowledges acceptance of the Terms and Conditions of Service and this proposal.

We are pleased to have this opportunity to offer our services and look forward to assisting you on this project. If you have any questions regarding the information contained in this proposal, please contact either of the undersigned at (847) 279-0366.

Respectfully,

ECS MIDWEST, LLC



Jason Warren, REM
Principal



Mike V. McGee, PG
Senior Project Manager

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Crest Hill SSI
January 2024

**COST ESTIMATE
ENVIRONMENTAL SERVICES
1610 PLAINFIELD ROAD
CREST HILL, ILLINOIS 60403**

We propose to complete the above scope of services on a lump sum basis. We have estimated the time requirements based upon the level of effort deemed appropriate for the proposed Tasks. The proposed budget will not be exceeded by 10% without receipt of prior authorization from Client.

Description of Work	Unit	Unit Price	Total Cost
Subsurface Environmental Assessment			
ECS Geologist/Engineer	1 Day	\$1,500	\$1,500
Private Utility Locator Plus Geophysical Exploration (GPR)	Lump	\$750	\$750
Drilling Subcontractor	Lump	\$3,550	\$3,550
Equipment Rental/Expenses	Lump	\$250	\$250
Laboratory Subcontractor (7-10 business days turnaround)	Soil	\$4,390	\$7,085
	Groundwater	\$1,495	
	Soil/Gas	\$1,200	
Data Evaluation/Reporting	Lump	\$1,500	\$1,500
Project Management/Senior Review	Lump	\$1,000	\$1,000

Total Estimated Cost	\$15,635
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COST ESTIMATE

Service	Initial
Subsurface Environmental Assessment (\$15,635)	

PROPOSAL ACCEPTANCE

Proposal Information	
ECS Proposal Number	53: 6288
Location	1610 Plainfield Road, Crest Hill, Illinois
Client Information	
Signature – Authorized Representative Responsible for Payment	
Print or Type Name of Client and Company	Mr. Raymond Soliman, Mayor
Date of Execution	
Proposal Addressee - Company	City of Crest Hill
INVOICE INFORMATION	
Please print or type below if invoice addressee is different than proposal addressee or if there are any special invoice instructions	
Invoice Addressee - Name	
Invoice Addressee - Company	
Invoice Addressee – Street Address	
Invoice Addressee – City, State, Zip Code	
Invoice Addressee – E-mail	
Invoice Addressee – Phone Number	
Purchase Order Number	
Client Project/Accounting Number	

ECS MIDWEST, LLC

TERMS AND CONDITIONS OF SERVICE

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

1.0 INDEPENDENT CONSULTANT STATUS - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, 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 contractors and consultants. 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 and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.

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

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

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

4.0 CLIENT DISCLOSURES

4.1 Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) 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 to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

5.0 INFORMATION PROVIDED BY OTHERS - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT's agents, contractors, or consultants, 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 subcontractors and/or agents, 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 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 minor, but common, 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' subcontractor'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 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 process 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 the 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, it's licensed consultants 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 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). 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, consultants or other parties 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, trenching, 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 contractor or consultant or any of their subcontractors or subconsultants.
- 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 contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks 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. Unless the CLIENT can show that the error or omission is 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 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 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 in these Terms 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 shall 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. 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, its personnel, its consultants, and its 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 two (2) times 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 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.) ECS does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, or any other statute.

- 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 negligent 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, specifically including its professional engineers and geologists.
- 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 (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 or these terms, 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 and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. 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 represented by these 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 its agreement to be fully bound the foregoing Terms. 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.