

RESOLUTION 2025-30

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH TO AWARD A PROPOSAL SUBMITTED BY MEAD & HUNT TO PROVIDE DESIGN SERVICES AND PERMITTING FOR A NEW 16-INCH WATER MAIN ALONG LAMBERT AVENUE (PROJECT # 636) FOR AN AMOUNT NOT TO EXCEED \$149,957.90; PROVIDING FOR CONFLICT AND AN EFFECTIVE DATE.

WHEREAS, the City operates and maintains a municipal water system (the "SYSTEM"), providing safe potable water to residents, businesses, and other agencies; and

WHEREAS, one water main provides potable water to the island portion of the City, east of the Atlantic Intracoastal Waterway, and limited water supply exists on the island portion of the City; and,

WHEREAS, to provide for a redundant water main crossing the Atlantic Intracoastal Waterway, the City Commission, in the 2023/2024 Budget, approved the design and permitting for an extension of a 16-inch water main north along Lambert Avenue from the vicinity of State Route 100 to approximately the vicinity of N. 10th Street (Phase 1 of the eventual crossing); and,

WHEREAS, City staff solicited a proposal for Phase 1 (Exhibit A) from Mead & Hunt, Inc., a consulting engineering firm included on the City's approved and qualified consultant register;

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, AS FOLLOWS:

SECTION 1. The City of Flagler Beach City Commission approves the proposal submitted by Mead & Hunt in an amount not to exceed \$149,957.90 (Exhibit A) for design and permitting services related to approximately 3,500 linear feet of pipe along Lamber Avenue from SR 100 to the approximate site of the future proposed river crossing at N. 10th Street.

SECTION 2. The City Commission authorizes City Staff to issue a Notice to Proceed.

SECTION 3. All resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. This Resolution shall become effective immediately upon passage as provided by law.

PASSED AND ADOPTED THIS 27th DAY OF March, 2025.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION

ATTEST:

Patti King, Mayor

Penny Overstreet, City Clerk

Attachment:
Exhibit A



September 6, 2024

Bill Freeman
City Engineer
City of Flagler Beach
PO Box 70
Flagler Beach, FL 32136

Email: bfreeman@cityofflaglerbeach.com
Hard Copy Mailed Only on Request

Subject: Flagler Beach Water Main River Crossing – Upland Portion

Dear Mr. Freeman,

We are pleased to offer the attached engineering scope of services for the above referenced project. The scope was revised for the future water main river crossing to be at N. 10th Street instead of N. 17th Street. The scope includes design and permitting for the upland portion of the 16-inch water main along Lambert Avenue from State Route 100 up to the extent of the future proposed river crossing at N. 10th Street on the beach side. The design phases were also revised to fit the City's budget.

The enclosed engineering scope of services is in accordance with our contract. We appreciate this opportunity to be of service to the City. If you have any questions, please do not hesitate to reach out.

Sincerely,
MEAD & HUNT, Inc.

A handwritten signature in black ink, appearing to be 'SK'.

Solomon Kang, PE, PMP
Project Manager

A handwritten signature in black ink, appearing to be 'DK'.

David King, PE
Vice President

SK/DK;sk

Attachment: Scope of Services
Southeastern Surveying & Mapping Corp. Proposal
ECS Florida, LLC Proposal

**CITY OF FLAGLER BEACH
SCOPE OF SERVICES
FOR
WATER MAIN RIVER CROSSING – UPLAND PORTION**

The Task Order is in conformance with the Agreement for Continuing Engineering Consulting Services, dated March 23, 2017, between the City of Flagler Beach (OWNER) and Mead & Hunt, Inc. (MEAD & HUNT) and is referred to herein as the Contract.

GENERAL:

The project involves the design and permitting for the upland portion of a new 16-inch water main (WM) along Lambert Avenue from the north side of State Route 100 connecting an existing 16-inch WM up to the extent of the future proposed river crossing at N. 10th Street on the beach side which consists of approximately 3,500 linear feet (LF) of pipe. The design will include open-cut excavation, but the bid documents will include an alternate option for horizontal directional drilling (HDD). The order of magnitude construction cost estimate of the water main is \$1.5M, not including any special treatment/restoration of the Lambert Avenue right-of-way/drainage system. An aerial with the project site/route is shown below:



MEAD & HUNT's consulting services will include the following tasks:

- PHASE 1 – PROJECT MANAGEMENT
- PHASE 2 – SUBCONSULTANT TASKS & COORDINATION
- PHASE 3 – PRELIMINARY DESIGN
- PHASE 4 – PROJECT DESIGN
 - Conceptual Design
 - Final Design
- PHASE 5 – PERMITTING
- PHASE 6 – CONTINGENCY

The Scope of Services is further defined and described in the following tasks:

SCOPE OF SERVICES:

After receipt of authorization to proceed, MEAD & HUNT will provide the following services:

PHASE 1 – PROJECT MANAGEMENT

Project Coordination

MEAD & HUNT's Project Manager (PM) will monitor and manage the project budget, schedule, and scope throughout the estimated nine (9) month project duration. The PM will manage the development of project work and subconsultant efforts.

Project Kick-Off Meeting

MEAD & HUNT will coordinate and conduct one (1) hybrid virtual and in-person project kick-off meeting with the project team and OWNER staff to review project goals, scope of work, team member roles, lines of communication, project schedule and administrative processes. Following the meeting, MEAD & HUNT will prepare a written summary of the project meeting and distribute it to the attendees.

Quality Assurance / Quality Control

MEAD & HUNT will implement, and the PM will monitor, a quality assurance and control process, which includes independent technical review of project technical work products before their submission to the OWNER.

Deliverables – Project Management

- Kick-Off Meeting Agenda and Summary (Electronic delivery)
- Monthly Invoices (Electronic delivery)

PHASE 2 – SUBCONSULTANT TASKS & COORDINATION

MEAD & HUNT will coordinate with the following subconsultants and incorporate their work into the project design.

Topographic and Subsurface Utility Survey

MEAD & HUNT will contract with Southeastern Surveying & Mapping Corporation (SSMC) to provide the required surveying, mapping, right-of-way (ROW) documentation and limited Subsurface Utility Engineering (SUE) for the proposed route. The SSMC proposal is attached and includes the survey which will be performed from roadway centerline to ROW with a 15-ft offset for the entire alignment as well as the following services:

- a. Establish Project Control utilizing VRS GPS and leveling techniques.
 - i. Horizontal coordinates will be referenced to Florida East Zone, North American Datum of 1983, adjustment of 2011. Vertical control will be based on North American Vertical Datum of 1988.
- b. Topographic survey of the project area including:
 - i. Prepare digital terrain model of the surface using cross-sections and break lines collected.
 - ii. Visible features (pavement, curbs, sidewalks, walls, fences, utility poles, ditches, fire hydrants, valves, signs, etc.)
 - iii. Locate and obtain size, type, and invert elevations of existing sanitary sewer and storm drain facilities.
 - iv. Locate visible evidence of subsurface utilities (marker posts, pull boxes, valve boxes, manholes, paint marks, flagging, etc.)
 - v. Major landscape features and trees greater than 4" at DBH.
- c. Prepare a digital terrain model with grade elevations provided every 50 feet.
- d. Collect Plat / Property / Section corners to be able to calculate the existing rights of way and property lines for each project site. Please note that this is not a boundary survey or a right of way map.
- e. All work shall be performed in accordance with the minimum requirements of Chapter 5J-17 of the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes
- f. Provide technicians, equipment, and special tools to designate the horizontal position of the utilities in the project area using EM and GPR methods. The SUE effort will include Level B designating in coordination with the geotechnical efforts. City personnel and forces may be requested to assist in locating poorly documented existing water and wastewater facilities in the field. Eight (8) vacuum locates for Level A SUE test holes are included in this scope of work to confirm the location and elevation of selected existing utilities, and optional quotes for additional vacuum locates are provided.

Geotechnical Investigation

MEAD & HUNT will subcontract with ECS Florida as the geotechnical engineer to obtain information on the general subsurface soil conditions along the project route. The subsurface materials encountered will then be evaluated with respect to the available project characteristics. The ECS Florida proposal is attached and will include the submission of a geotechnical report with the following information:

- a. Identification of the existing groundwater levels at the time of the field work and estimated normal seasonal high groundwater table.
- b. Classify and stratify soil samples in the laboratory using the Unified Soil Classification System and conduct a laboratory testing program.

- c. General location and description of potentially deleterious materials encountered in the borings which may have an impact on the proposed construction.
- d. Evaluation of the subsurface soil properties and general recommendations for trenchless and open cut excavation pipe installation.
- e. General site preparation recommendations including the suitability of excavated soils for use as backfill.

The geotechnical proposal also includes a total of eight (8) 8-ft hand auger borings along the water main (WM) route. In the event hand augers cannot achieve the required 8-ft depth, optional quotes for (2) Standard Penetration Test (SPT) borings advanced to a depth of 8 feet were provided. If the OWNER would like to consider HDD design from the beginning, an optional quote for two (2) SPT borings advanced to a depth of 20 feet was also provided. Results of the subsurface exploration and engineering analysis will be presented in a written report signed and sealed by a professional engineer specializing in geotechnical engineering. The precise locations of the hand augers and SPT borings will be confirmed later by MEAD & HUNT.

PHASE 3 – PRELIMINARY DESIGN

Preliminary Design Report

MEAD & HUNT will prepare a draft Preliminary Design Report (PDR) which will include the following: project understanding and goals, evaluation of WM route and installation, planning level engineer's opinion of probable construction cost (EOPCC), and confirmation of project permitting requirements.

For the draft PDR, MEAD & HUNT will review the project limits and conditions through the scoped survey, geotechnical report, site visits, and analysis of City-provided information. MEAD & HUNT will evaluate the available ROW and platted easements for the proposed WM route. The draft PDR will be submitted to the OWNER for review and comment. It is assumed the OWNER will conduct their review in a two-week period. At the end of the Owner's review period, MEAD & HUNT will schedule and attend a hybrid virtual and in-person draft PDR review meeting. The Owner's comments from the PDR Design Review Meeting, including the confirmed WM route and installation method, will be reflected in the final PDR.

Deliverables – Preliminary Design

- Draft Preliminary Design Report (electronic PDF format)
- Preliminary Design Review Meeting Summary (electronic PDF format)
- Final Preliminary Design Report (electronic PDF format)

PHASE 4 – PROJECT DESIGN

Conceptual Design Development

Based on the Final Preliminary Design Report, MEAD & HUNT will prepare conceptual design level drawings and specifications. MEAD & HUNT will prepare the front-end contract documents and will be coordinated with the project technical specifications.

The conceptual design submittal package will be submitted to the OWNER for review and comment. The submittal will include the items shown in the deliverable section below. It is assumed the OWNER will conduct their review in a two-week period. At the end of the OWNER's review period, MEAD & HUNT will schedule and attend a hybrid virtual and in-person conceptual design review meeting to review the OWNER's comments on the design drawings and specifications.

Deliverables – Conceptual Design

- Conceptual Design Drawings (electronic PDF format)
- Conceptual Specifications (electronic PDF format)
- Updated EOPCC (electronic PDF format)
- Conceptual Design Review Meeting Summary (electronic PDF format)

Final Design Development

Based on the OWNER's Conceptual Design review comments received, MEAD & HUNT will prepare revised design drawings and specifications to Final Design. MEAD & HUNT will prepare an updated EOPCC based upon the Final submittal documents. The Final Design package will be submitted to the OWNER which will include the items shown in the deliverable section below.

Deliverables – Final Design

- Final Design Drawings (electronic PDF format)
- Final Specifications (electronic PDF format)
- Updated EOPCC (electronic PDF format)

PHASE 5 – PERMITTING ASSISTANCE

MEAD & HUNT shall prepare and submit permit applications for the project as detailed below.

During the preliminary design phase, MEAD & HUNT will attend one (1) virtual pre-application meeting with the environmental/submerged lands division of Florida Department of Environmental Protection (FDEP) to discuss any permitting concerns with the proposed river crossing location. MEAD & HUNT will prepare an agenda and meeting summary for the pre-application meeting. After the pre-application meeting, necessary revisions to the design recommendations will be reviewed with the OWNER and incorporated into the PDR. The permit application will be submitted to FDEP after the Conceptual Design has been reviewed and accepted by the OWNER. MEAD & HUNT assumes the upland portion tie-in point will be from the existing WM river crossing across from N. 3rd Street along Lehigh Avenue and so this project does not require coordination or permitting from FDOT.

MEAD & HUNT will respond to one (1) Request for Additional Information (RAI) as part of the permit application process.

Deliverables – Permitting

- Final FDEP Permit to Construct Water Main Extensions for PWS (application and final permit)

PHASE 6 – CONTINGENCY

If additional services are identified as required during the duration of the project, MEAD & HUNT will request written approval from the OWNER to utilize contingency funds for any additional work items. MEAD & HUNT will not bill against the contingency funding without prior authorization from the OWNER.

EXCLUSIONS:

This scope of services excludes all items not specifically described herein, including but not limited to:

- Easement Acquisitions
- Special Studies or Investigations
- Funding Assistance
- Environmental Services
- Gopher Tortoise Survey (None Anticipated)
- Bidding Services (Future Task Order)
- Construction Services (Future Task Order)

SCHEDULE:

Mead & Hunt estimates the project phases to be completed in accordance with the following schedule:

Phase/Task	Duration to Complete (calendar days)	Cumulative Duration (calendar days)	Commencing Upon
Phase 1 – Project Management	270 days	-	Receipt of Notice to Proceed (NTP)
Phase 2 – Subconsultant Tasks	45 days	45 days	Receipt of Notice to Proceed (NTP)
Topographic and SUE Survey	45 days		Kick-off Meeting
Geotechnical Report	45 days		Kick-off Meeting
Phase 3 – Preliminary Design	45 days	105 days	Completion of Subconsultant Tasks
Draft PDR	30 days		Completion of Subconsultant Tasks
Final PDR	30 days		Completion of PDR Review Meeting
Phase 4 – Project Design	105 days	210 days	Completion of PDR Review Meeting
Conceptual Design	60 days		Completion of PDR Review Meeting
Final Design	45 days		Completion of Conceptual Design Review Meeting
Phase 5 – Permitting Assistance	60 days	270 days	OWNER Acceptance of Conceptual Design
Phase 6 – Contingency	TBD	TBD	OWNER's Discretion

The above timeframes include up to 30 days of total OWNER and 30 days total agency review times.

Mr. Bill Freeman
September 6, 2024
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COMPENSATION:

The not-to-exceed cost for this Scope of Services is **\$149,957.90** which includes a 5% contingency of \$4,862.40. The Contingency funds authorized for use on this project may only be expended upon written approval from the OWNER. Any out-of-scope work performed requiring the Contingency funds will be considered at-risk and may not be compensated until, or if, written approval is granted by the OWNER.

The above fee is based on the following breakdown:

Phase/Task	Fee/Cost	Basis
Phase 1 – Project Management	\$20,110.00	Lump Sum
Phase 2 – Subconsultant Coordination	\$9,429.00	Lump Sum
Phase 3 – Preliminary Design	\$18,091.00	Lump Sum
Phase 4 – Project Design	\$44,610.00	Lump Sum
Phase 5 – Permitting Assistance	\$5,008.00	Lump Sum
Subtotal	\$97,248.00	
Phase 6 – 5% Contingency	\$4,862.40	TBD
Subconsultants Tasks/Reimbursables		
SSMC Survey and SUE Allowance	\$43,347.50	Actual Cost
ECS Geotech Allowance	3,500.00	Actual Cost
Printing/Permit Fee Allowance	\$1,000	Actual Cost
TOTAL	\$149,957.90	

AUTHORIZATION:

The scope of services and compensation stated in this proposal are valid for a period of thirty (30) days from date of submission. If authorization to proceed is not received during this period, this proposal may be withdrawn or modified by MEAD & HUNT.

Accepted by: CITY OF FLAGLER BEACH

Approved by: MEAD & HUNT, INC.

By: _____

By: 

Name: _____

Name: David A. King, PE

Title: _____

Title: Vice President

*The above person is authorized to sign for Owner
and bind the Owner to the terms hereof.*

Date: _____

Date: September 6, 2024

Mr. Bill Freeman
September 6, 2024
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PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN
INDIVIDUAL EMPLOYEE OR AGENT OF MEAD & HUNT INC. MAY NOT
BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

IF THE CONTRACTOR (MEAD & HUNT INC.) HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC
RECORDS RELATING TO THIS CONTRACT (PROPOSAL), CONTACT THE CUSTODIAN OF PUBLIC
RECORDS AT CITY HALL, CITY OF FLAGLER BEACH, 105 S. SECOND STREET, FLAGLER
BEACH, FLORIDA 32136, PENNY OVERSTREET, CITY CLERK 386-517-2000,
POVERSTREET@CITYOFFLAGLERBEACH.COM.



September 4, 2024

VIA EMAIL: Solomon.Kang@meadhunt.com

Mr. Solomon Kang, PE, PMP | Georgia Water Market Leader
Mead & Hunt Company
4401 Eastport Parkway
Port Orange, FL 32127
608-443-0477

RE: Flagler Beach Water Main River Crossing Upland Portion
State Highway 201 to Palm Drive, Flagler Beach, Florida 32136
Section 12, 1, 2, Township 12 South, Range 31 East, Flagler County, Florida

Dear Mr. Kang,

PROJECT STATEMENT: We are pleased to submit our proposal for Surveying Services and Utility Services on the above-referenced project. It is our understanding that Mead & Hunt Company requires a Topographic Survey to support the design of the Flagler Beach Water Main River Crossing Upland Portion Project. The specific area is identified in Attachment "B". We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

SCOPE OF WORK:

Provide a Topographic Survey to meet the Standards of Practice as mandated by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17 FAC, Section 472.027 of the Florida Statutes. The survey will include the following:

TASK I – Topographic Survey

1. Establish Project Control utilizing VRS GPS and leveling techniques. Horizontal coordinates will be referenced to Florida East Zone, North American Datum of 1983, adjustment of 2011. Vertical control will be based on the North American Vertical Datum of 1988.
2. Topographic survey of the project area including:
 - A. Prepare a digital terrain model of the surface using cross-sections and break lines collected.
 - B. Visible features (pavement, curbs, sidewalks, walls, fences, utility poles, ditches, fire hydrants, valves, signs, etc.)
 - C. Locate and obtain size, type, and invert elevations of existing sanitary sewer and storm drain facilities.
 - D. Locate visible evidence of subsurface utilities (marker posts, pull boxes, valve boxes, manholes, paint marks, flagging, etc.)
 - E. Locate Major landscape features and trees greater than 4" at DBH.
 - F. Prepare a digital terrain model with grade elevations provided every 50 feet.
 - G. Collect Plat / Property / Section corners to be able to calculate the existing rights of way and property lines for each project site. Please note that this is not a boundary survey or a right-of-way map.
 - H. Topographic Coverage will be limited to the extents of the right of way of Lambert Avenue plus five (5) feet along the route shown in Exhibit "B".

DELIVERABLE

The final product will be **three (3)** certified prints and an electronic file for your use.

DELIVERY

All documents will be sent to Mead & Hunt Company or the client's representative(s) via **USPS**. If overnight shipping is requested or required by Mead & Hunt Company or the client's representative(s), then said charges would appear as a separate item on our invoice unless we are provided with the client's overnight carrier account number for shipping.

ADDITIONAL SERVICES

Any service not explicitly provided for in the above scope will be billed as additional services and will be performed at our then-current hourly rates as provided for in Exhibit A.

INFORMATION PROVIDED BY CLIENT

SSMC shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

TASK II - Subsurface Utility Designation

1. Horizontally locate and field mark (paint & flags) all public subsurface utility mains found excluding service lines, gravity sewer lines and irrigation found within the full right of way of the area shown in red on the attached exhibit.
2. Coordinate Sunshine 811 and utility locates to include supplemental calls to each locator to expedite the field marking of each subsurface utility as required by law.
3. Expose the subject utilities by using non-destructive vacuum excavation methods at fifteen (15) specific locations to be determined after the designation is completed.
4. Confirm/determine the vertical and horizontal position of the subject utilities and record the information, using the locate marks provided by the utility owners and/or their representatives unless otherwise specifically requested by client.
5. Any asphalt/concrete removed will be repaired using like materials.
6. Tie each test hole location to a minimum of three visible physical features to enable this data to be added to your base map and also enable future recovery.
7. Locate all utility data (designation and test holes) using GPS or conventional surveying equipment and control established for this project.

UTILITY TERMS AND CONDITIONS

Mead & Hunt Company agrees to abide by Sunshine 811, Florida State Statutes Chapter 556.106, and all applicable laws and regulations that pertain to the services provided.

Mead & Hunt Company **MUST** provide Southeastern Surveying and Mapping Corporation (SSMC) all plans and records for this site prior to the commencement of field efforts **AND** review plans with SSMC technician. SSMC will rely on the accuracy of such plans and records and will notify Mead & Hunt Company if there are any patently or reasonably identifiable defects in the documents prior to performing services. Mead & Hunt Company representative will be responsible for reviewing plans with SSMC technicians and indicate what utility structures are expected to be encountered and where.

SSMC shall review the site conditions with the use of a Ground Penetrating Radar (GPR) in the presence of Mead & Hunt Company Authorized Representative based upon the plans and records provided.

Mead and Hunt Company is aware that due to the inherent uncertain nature of subsurface utilities, including but not limited to deficient or misrepresentation of prints, SSMC cannot guarantee that all subsurface utility lines will be accounted for. SSMC will ensure that all reasonable efforts are made to identify the location of said underground utilities and provide the best available information within the project area with the use of Ground Penetrating Radar and Electronic Line Locating Equipment, as needed. Additional research will only be conducted by SSMC if requested in writing by Mead & Hunt Company.

In accordance with the Underground Facility Damage Prevention and Safety Act, the Design Engineer shall perform sufficient Utility Coordination with the Utility providers in this location to affirm the information from SSMC's efforts and confirm that no other subsurface utility is possibly undetected by these efforts.

SSMC will certify that the surface designation is within two (2) feet of the true underground position of the utility relative to the mark as shown on the surface in accordance with the plans provided and the reasonable efforts conducted to locate the utilities as outlined above.

SSMC shall not be held liable for any latent or unreasonably discoverable utilities in the project area. Furthermore in the event of a claim regarding the services provided in the proposal, SSMC shall have liability for reasonable and necessary defense costs to the extent caused by SSMC's negligence.

M.O.T. will be used only if absolutely necessary and will be billed at the rates shown below.

Note: If permitting is required for said work, these charges will be billed at the rates shown below.

Note: Test Holes that require a depth of greater than ten (10) feet or require a substantial amount of increased effort (sleeving, shoring, de-watering, etc.), then said Test Holes may need to be negotiated separately on a case-by-case basis if normal vacuum excavation practices do not allow said utilities to be exposed.

Note: All utility sizes given are outside diameter unless otherwise specified and are approximate only due to uncontrollable field conditions that may be encountered during excavation.

Note: Any additional overlaying or restoration of pavement, other than the replacement of materials removed and cold patched, will be the responsibility of Mead & Hunt.

PROJECT TIMELINE:

We anticipate the completion of the above-described work within eight (8) weeks after receipt of written notice to proceed.

EXPENSES AND FEES

Our fee for the above-referenced work will be as follows:

TASK I – Topographic Survey:	\$ 25,640.50
TASK II - Subsurface Utility Designation & Survey Collection:	\$ 12,779.00
<u>Test Holes/Day Rate:</u>	
\$616.00 Dirt/Each (anticipate 8)	\$ 4,928.00
\$765.00 Asphalt/Concrete/Each	
<u>M.O.T. (SSMC)(If required):</u>	
\$1,013.00 per Lane Closure/Day Rate	
\$1,231.00 per Lane Closure/Night Rate	
<u>Permitting (If required):</u>	
\$133.00 per hour + Cost of Permit	
Total:	\$ 43,347.50

PAYMENT TERMS:

Payment is expected within thirty (30) days from the date of the invoice.

Mr. Soloman Kang, PE,PMP
FB Water Main River Crossing Upland Portion
September 4, 2024



LATE FEES

Late fees will assess to all payments past the 30 day mark. Late fee will be in the amount of \$50.00. Additional late fees will continue to accrue every 30 days past invoice date. Reference invoice number and please remit all payments to 6500 All American Blvd. Orlando, FL 32810.

PAYMENT OPTIONS

SSMC is committed to ensuring our clients have access to various payment options. These options include cash, paper checks, ACH transfers, wire transfers, and credit cards. Credit card payments are subject to a vendor administrative fee of 3.5% of the invoice total.

CLOSURE

In addition to the matters set forth above, our Agreement shall include and be subject to, and only to the attached General Terms and Conditions, which are incorporated by reference. **UPON SIGNATURE, NO OTHER CONTRACTS WILL BE CONSIDERED FOR THIS SCOPE OF WORK.**

We look forward to the opportunity to work with you on this project.

Sincerely,

Alex D. Jenkins, CST IV
Survey Division Project Manager

ADJ:ler

If the above scope, period of service and project fees meets with your approval, please forward the service Work Order along with the client Prime Agreement as per the Master Services Agreement dated 08/09/17 to Southeastern Surveying and Mapping Corporation (SSMC) as notice to proceed along with the notice of commencement.

Fees and times stated in this agreement are valid for six months from the date of the proposal.

ACCEPTED BY:

_____/_____
Principal / or Corporate Officer TITLE Printed Name Date

EXHIBIT "A"

HOURLY RATES

Surveying and Mapping Services

Category	Day Rate	Night / Weekend Rates
Professional Surveyor & Mapper/PSM	\$ 199.00	
Project Surveyor	\$ 177.00	
Expert Witness	\$ 360.00	
Senior Technician	\$ 133.00	
CAD Technician	\$ 118.00	
Clerical	\$ 79.00	\$ 118.00
One Person Field Crew	\$ 133.00	
Two Person Field Crew	\$ 178.00	\$ 267.00
Three Person Field Crew	\$ 233.00	\$ 350.00
Four Person Field Crew	\$ 289.00	\$ 433.00
Sketch of Descriptions (per SD)	\$ 676.00	
Residential Elevation Certificate	\$ 925.00	
Commercial Elevation Certificate (per bldg.)	\$ 1,306.00	
Initial and Second Plat Review (up to two sheets)	\$ 1,150.00 / per plat	
Initial and Second Plat Review (over two sheets)	\$ 200.00 / per sheet	
Plat (Third or additional reviews of same plat)	\$ 450.00 / each	

LIDAR/UAV

Category	Day Rate	Night / Weekend Rates
LIDAR Technician	\$ 133.00	
LIDAR Project Manager	\$ 177.00	
LIDAR One Person Field Crew	\$ 155.00	
LIDAR Two Person Field Crew	\$ 204.00	
Clerical	\$ 79.00	\$ 118.00
UAS/UAV Photogrammetry Crew	\$ 268.00	
Mobile Scan Crew	\$ 268.00	

Construction Services

Category	Day Rate	Night / Weekend Rates
Construction Professional Surveyor & Mapper	\$ 203.00	
Construction Project Manager	\$ 203.00	
Construction Senior Technician	\$ 153.00	
Construction CAD Technician	\$ 136.00	
Clerical	\$ 79.00	\$ 118.00
Construction One Person Field Crew	\$ 153.00	
Construction Two Person Field Crew	\$ 204.00	\$ 306.00
Construction Three Person Field Crew	\$ 268.00	\$ 402.00
Construction Four Person Field Crew	\$ 332.00	\$ 498.00

GIS Services

Category	Day Rate	Night / Weekend Rates
Professional Engineer	\$ 213.00	
GIS Project Manager	\$ 177.00	
GIS Analyst	\$ 119.00	
GIS Technician	\$ 79.00	
Clerical	\$ 79.00	\$ 118.00
Two Person GIS Crew	\$ 178.00	
One Person GIS Crew	\$ 133.00	

Subsurface Utility Engineering (SUE) Services

Category	Day Rate	Night / Weekend Rates
Project Manager	\$ 177.00	\$ 265.00
Senior Technician	\$ 133.00	\$ 200.00
Clerical	\$ 79.00	\$ 118.00
One Person Crew	\$ 178.00	\$ 267.00
Two Person Crew	\$ 216.00	\$ 324.00
Three Person Crew	\$ 301.00	\$ 451.00
Vacuum Excavation (Per Test Hole)		
1-3 Test Holes/Dirt	\$ 2,664.00	\$ 3,864.00
1-3 Test Holes/Asphalt/Concrete	\$ 2,664.00	\$ 3,864.00
4 or more Test Holes/Dirt (Per Location)	\$ 616.00 / each	\$ 924.00 / each
4 or more Test Holes/Asphalt/Concrete (Per)	\$ 765.00 / each	\$ 1,148.00 / each
One Person Concrete Radar Mapping/Imaging	\$ 217.00	\$ 336.00
Temporary Traffic Control (TTC)		
Per Lane Closure	\$ 1,013.00 / each	\$ 1,231.00 / each
Per Sidewalk Closure	\$ 500.00 / each	\$ 600.00 / each
Flagman Control (Hourly – Per Flagger)	\$ 100.00	\$ 150.00
Mast Arms (Per Location)		
Subsurface Utility Locating (QL-B & QL-A)	\$ 1,656.00	
Concrete/Asphalt Removal & Repair	\$ 436.00	
Survey Staking of Pole Location	\$ 431.00	

Miscellaneous Services

Per Diem/Lodging Expenses		
Category	Day Rate	Night / Weekend Rates
Per Day Two Person Crew	\$ 395.00	
Per Day Three Person Crew	\$ 595.00	

PROJECT LIMITS



GENERAL TERMS AND CONDITIONS

These standard terms and conditions ("STCS") are incorporated by reference into the foregoing proposal, along with any future modifications or amendments (the "Agreement") between Southeastern Surveying and Mapping Corporation ("SSMC") and its Client ("You" or "Your") for the performance of surveying services ("Services"). These STCS are fully binding upon you just as if they were fully outlined in the body of the proposal letter and shall supersede any term or provision elsewhere in the agreement in conflict with these STCS.

SCOPE OF SERVICES.

For the fee outlined in this Proposal, you agree that SSMC shall only be obligated to render the Services expressly described in this Proposal. Unless otherwise expressly required, in no event do we have any obligation or responsibility for:

- a. The correctness and completeness of any document prepared by another entity.
- b. The correctness and completeness of any drawing we prepared unless it was properly signed and sealed by a registered professional on our behalf.
- c. Favorable or timely comment or action by any governmental entity on submitting any construction documents, land use or feasibility studies, appeals, petitions for exceptions or waivers, or other requests or documents whatsoever.
- d. Off-site circumstances other than those clearly visible and actually known to us from on-site work.
- e. The actual location (or characteristics) of any portion of a utility that is not entirely visible from the surface.
- f. The safety conditions for the entire site, construction quality, means, methods, or sequences.
- g. The correctness of any geotechnical services performed by others, whether or not as our subcontractor.

Should the shop drawing review be incorporated into the Services, we shall promptly pass on the shop drawings. Checking and approving shop drawings will be general for conformance with the Project's design concept to which this Proposal relates ("Project") and compliance with the information in the construction documents. They will not include quantities, detailed dimensions, or dimensions adjustments to actual field conditions. Approval shall not be construed as permitting any departure from contract requirements nor as relieving the Client of the sole and final responsibility for any error in details, dimensions, or otherwise that may exist. SSMC does not provide legal, accounting, or insurance services.

YOUR ORAL DECISIONS

You, or any of your directors, officers, partners, members, managers, employees or agents having apparent authority from you, may orally: (a) make decisions relating to Services or the Agreement; (b) request a change in the scope of Services under the Agreement; or (c) request SSMC to render additional services under the Agreement, subject to our right to require you to submit the request in writing before your decision or request shall be considered to have been effectively made. You may, at any time, limit the authority of any or all persons to act orally on your behalf under this Paragraph, by giving SSMC seven (7) days advance written notice.

STANDARD OF CARE

The standard of care for all professional services performed by SSMC under this Agreement shall be the skill and care used by members of SSMC's profession practicing under similar circumstances at the same time and in the same locality.

PAYMENT

SSMC may submit invoices at any time to you for Services and reimbursable expenses incurred. Invoices are payable within 30 days of the invoice date. Invoices may be based either upon our estimate of the proportion of the total services completed at the time of billing for lump sum or fixed fee services, or in the case of hourly services, upon rendering of the Services. If any invoice is not paid within 30 days of the invoice date, SSMC shall have the right either to suspend the performance of our Services until all invoices more than 30 days past due are fully paid or to terminate the agreement and to initiate proceedings to recover amounts owed by you. Additionally, SSMC shall have the right to withhold from you the possession or use of any drawings or documents prepared by SSMC for you under this or any other agreement with you until all delinquent invoices are paid in full. You shall not offset payments of our invoices by any amounts due or claimed to be due for any reason.

If you do not give SSMC written notice disputing an invoice within 20 days of the invoice date, the invoice shall conclusively be deemed correct. All payments made by you should specify the invoice numbers being paid. If SSMC receives payments that do not specify the invoices being paid, you agree that SSMC may apply payments in our sole discretion. Time is of the essence of your payment obligations, and your failure to make full and timely payment shall be deemed a material breach.

PROPRIETARY RIGHTS

The drawings, specifications and other documents prepared by SSMC under this Agreement are instruments of SSMC's service for use solely for the Project and, unless otherwise provided, SSMC shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright and rights to any SSMC trademarks. You shall be permitted to retain copies, including reproducible copies of SSMC's instruments of service for information and reference for the Project. SSMC's drawings, specifications, or other documents shall not be used by you or others on other projects for any reason or for completion of this Project by other professionals unless you enter into a written agreement with SSMC allowing for such use. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication inconsistent with our reserved rights.

TERMINATION

Either party may terminate the Agreement if the other party materially breaches the Agreement. You shall immediately pay SSMC for our services rendered and expenses incurred through the termination date, including fees and expenses that SSMC incur as a result of the termination.

ASSIGNMENT

Neither party shall assign or transfer any rights, interests or claims arising under this Agreement without the written consent of the other. This Agreement shall not confer any benefit or right upon any person or entity other than you, SSMC, and its officers, employees, agents, and subcontractors. SSMC's officers, employees, agents, and subcontractors shall have and shall be entitled to the protections afforded SSMC under this Agreement.

GOVERNING LAW

This Agreement shall be interpreted under and governed by the laws of the State of Florida. The parties agree that the courts of Orange County, Florida, and the US District Court of the Middle District of Florida (Orlando Division) shall have exclusive jurisdiction over any controversy. The parties consent to the jurisdiction of the Courts and waive any objection either party might otherwise be entitled to assert regarding jurisdiction. The parties irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim arising out of or related to this Agreement.

SEVERABILITY

If any part, term, or provision of this agreement is held to be illegal or unenforceable, the validity and enforceability of the remaining parts, terms, and provisions of this agreement shall not be affected, and each party's rights shall be construed and enforced as if the agreement did not contain the illegal or unenforceable part, term, or provision.

LIMITATIONS ON LIABILITY

SSMC's liability for any loss, property damage or bodily injury of or to you caused in whole or in part by SSMC in the performance of this Agreement, or in the performance of any supplementary services in any way related to this Agreement, shall be limited in the aggregate to the amount of fees that you have paid to SSMC for the Services. The parties intend that the preceding limitation on liability shall apply to all claims, whether sounding in tort, in contract, in warranty or otherwise. You release, waive, and shall not seek contribution from, or indemnification by, SSMC for any claims of any nature made against you by any other person who may suffer any loss, property damage or bodily injury in any manner associated with SSMC's services, or SSMC's officers, employees, agents and subcontractors under this Agreement, or any supplementary services in any way related to this Agreement. SSMC shall not be liable to you, in any event or for any amount, for delays, or consequential, special or incidental damages; or punitive or exemplary damages.

PAYMENT OF ATTORNEY'S FEES

The losing party shall pay the winning party's reasonable attorney's fees and expenses for the prosecution or defense of any cause of action, claim or demand arising under this Agreement in any court or in arbitration.

INDEMNIFICATION

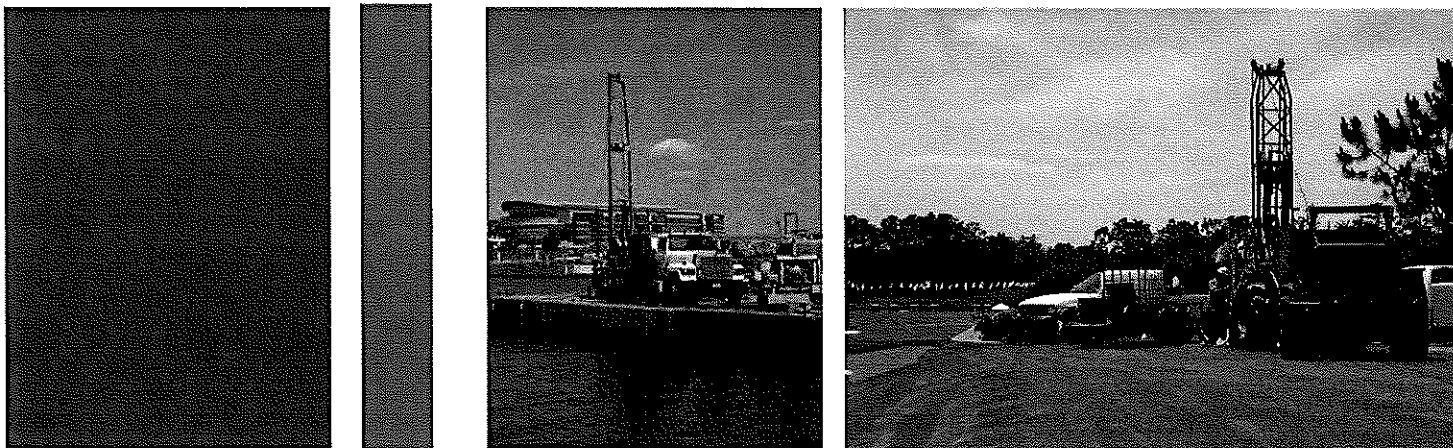
You agree to indemnify and hold SSMC harmless from and against any and all liability, loss, damages, claims, and demands for loss, damages, property damages or bodily injury, arising out of work undertaken on the Project by you, or your contractor, subcontractor or other independent company or consultant employed by you to work on the Project, or their respective partners, members, managers, directors, officers, employees, agents or assigns; or arising out of any other operation, no matter by whom performed, for and on behalf of you, or such contractor, subcontractor or other independent company or consultant, whether or not due in part to errors or omissions by us in the performance of this Agreement, or in the performance of any supplementary service in any way related to this Agreement, provided that you are not required to indemnify and hold SSMC harmless under this Paragraph in the event of SSMC's sole negligence.

INSURANCE

SSMC represents that it carries and will continue carry General Liability in the amount of \$1M per each occurrence and \$2M per general aggregate, Worker's Compensation in the amount of \$1M, Automobile Liability in the amount of \$1M, Professional Liability also known as Errors and Omissions in the amount of \$5M per occurrence and general aggregate, and Umbrella Coverage in the amount of \$5M. General Liability, Automobile Liability and Worker's Compensation are primary and non-contributory with Umbrella following form. Certificates of Insurance shall be provided upon request, listing your Company as the certificate holder for a period of one (1) year. SSMC and Client shall waive subrogation against one another.

COMPLETE AGREEMENT

This Agreement contains the entire agreement between the parties concerning the matters covered herein. No prior representations, statements, or inducements made by either SSMC, you, or the respective agents of either, that is not contained in the Agreement shall enlarge, modify, alter, or otherwise vary the written terms of the Agreement unless they are made in writing and made a part of the Agreement by attachment, incorporated by reference in the Agreement or signed or initialed on behalf of both parties.



ECS Florida, LLC

Proposal for Geotechnical Exploration and Engineering Services

Water Main Project

Lambert Avenue
Flagler Beach, Florida 32136

ECS Proposal Number 56-2280

June 26, 2024
September 4, 2024 - Revised





ECS FLORIDA, LLC

Geotechnical • Construction Materials • Environmental • Facilities

"One Firm. One Mission."

June 26, 2024

September 4, 2024 - Revised

Mr. Solomon Kang, P.E., PMP
Georgia Water Market Leader
Mead & Hunt
4401 Eastport Parkway
Port Orange, Florida 32127

ECS Proposal No. 56-2280

Reference: Proposal for Geotechnical Exploration and Engineering Services
Water Main Project
Lambert Avenue
Flagler Beach, Florida 32136

Dear Mr. Solomon:

ECS Florida, LLC (ECS) is pleased to submit this proposal to provide subsurface exploration and geotechnical engineering services for the above-referenced project. This proposal contains our project understanding, proposed scope of services, fee estimate, schedule of work, and authorization requirements.

PROJECT UNDERSTANDING

Based on email correspondence from Mead & Hunt dated June 25, 2024 and August 28, 2024, including the provided project scope for the Lambert Avenue Water Main Project, we understand that the proposed project requires geotechnical engineering information and recommendations for approximately 3,500 LF of new water main to be constructed along Lambert Avenue in Flagler Beach, Florida. Geotechnical soil borings are proposed herein according to the scope of services requested by Mead & Hunt. The purpose of the borings is to evaluate the subsurface conditions along the proposed water main alignment for a geotechnical engineering report.

SCOPE OF SERVICES

Our integrated services will include drilling of the soil borings by drill crews under our supervision, laboratory testing of representative soil samples for pertinent engineering properties, various engineering analyses, and preparation of an engineering report. The objective of the geotechnical exploration is to provide site and subsurface information to evaluate the subsurface conditions at the site for the proposed construction. Upon completion of drilling operations, the samples will be returned to our laboratory in Daytona Beach, Florida for further identification and testing. The following field services are proposed, as requested:

Field Exploration

Location	Number of Borings	Depth of Borings Below Ground Surface, feet
Lambert Avenue*	8 Auger	8
(1) Provisional Fee: Lambert Avenue**	8 SPT***	8
(2) Provisional Fee: Lambert Avenue**	2 SPT***	20

*Boring locations to be provided by Mead & Hunt

** Provisional fees are included herein for (1) performing SPT borings should subsurface conditions be such that the required boring depth cannot be achieved with hand auger drilling methods, and (2) optional and deeper SPT borings may be performed if required by Mead & Hunt at specific locations along the alignment for directional drilling locations.

*** Standard Penetration Test

Laboratory classification and index property tests will be performed as necessary on selected soil samples obtained from the exploration. We expect this testing to include percent fines, moisture content and potentially environmental classification (corrosivity) testing.

A geotechnical engineer, licensed in the State of Florida, will direct the geotechnical exploration and provide an engineering evaluation of the site and subsurface conditions with respect to the planned construction and imposed loading conditions. The results of the exploration and engineering evaluation will then be documented in a report containing the following:

1. A brief discussion of our understanding of the planned construction and imposed loading conditions.
2. A presentation of the field and laboratory test procedures used, and the data obtained.
3. A presentation of the existing on-site surface conditions, such as topography, surface vegetation, roadway pavement conditions, etc. as they relate to the planned construction.
4. A presentation of the encountered subsurface conditions, including subsurface profiles and measured groundwater levels, estimated normal seasonal high groundwater levels, and estimated geotechnical engineering properties (as necessary).
5. A geotechnical engineering evaluation of the site and subsurface conditions with respect to the planned construction summarized herein, to include directional drill and open cut pipeline construction.
6. Recommendations for the use of subsurface soils as pipe bedding and backfill material.
7. Recommendations for the required site and subgrade preparation and earthwork construction.

PROPOSAL ASSUMPTIONS

ECS has made the following assumptions in developing this proposal:

- 2 full business days are needed for utility mark-up prior to the start of drilling operations.
- Drilling operations will last approximately 1 business day.

- Client will provide the right of access to the property; we assume Maintenance of Traffic (MOT) using a professional subcontractor will not be required. If a professional subcontractor is required for this service, additional fees will apply.

COST OF SERVICES

ECS will provide the proposed geotechnical base scope of services for a lump sum fee of **\$3,500** assuming ECS can achieve the boring depths with hand auger methods. In addition, ECS proposes the following Provisional Fees:

- (1) Should ECS not be able to achieve the requested boring depth, ECS proposes to perform SPT borings with a drilling rig for an additional Provisional Fee of **\$800**, added to the base fee.
- (2) Should Mead & Hunt require the optional 2 SPT borings to 20 feet below ground surface, a Provisional Fee of **\$900** will apply, added to the base fee.

If additional services are required because of unexpected field conditions encountered in our field exploration program, or because of a request for additional services, they would be invoiced in accordance with our current fee schedule. Before modifying or expanding the extent of our exploration program, you would be informed of our intentions for both your review and authorization.

Schedule

We are prepared to mobilize to the site within two to three weeks after authorization to proceed. The written report containing final recommendations will be submitted within two weeks after completion of all field testing.

UTILITY CLEARANCE

We will contact Sunshine 811 to locate underground utilities at the site; however, our experience indicates that Sunshine 811 will not locate utilities beyond the point of distribution (meters or gauge points) on private property. We will coordinate the location of our exploration in order to avoid any underground utilities indicated by the Sunshine 811 locating system. However, we will not be responsible for any private utilities not pointed out to us by the land owner or client prior to drilling activities. **If private utilities are a concern, we can provide a private utility line locator to reduce your liability.** Please read the following section on private utility locator services and if desired, indicate your request for their services on the attached Proposal Acceptance sheet.

Contracting a private utility locator service is not a guarantee that all utilities within a work site will be identified, but a service that is offered to lower the risk of the owner/client. ECS and our clients have had past success in avoiding utility conflicts by augmenting the Sunshine 811 services with a private utility locator service. Private utility locator services can identify utility alignments that incorporate significant iron content in the conduit materials. However, private utilities possessing the higher likelihood of not being easily identifiable, beyond the point of distribution, include all utilities not containing significant ferrous (iron) content (examples would include but not be limited to most sanitary



September 4, 2024

ECS FLORIDA, LLC

sewer alignments, copper or PVC water lines, fiber optic lines without tracer ribbons, copper electric lines with no surface exposure, drainage tiles/pipes, and irrigation lines).

Where a private locator service identifies a potential risk that is not traceable through conventional methods, ECS will notify the client immediately and work to resolve the issue. Additional costs related to the resolution of these potential utility conflicts will be invoiced out per our unit rates, as identified in this proposal, or as negotiated and approved at the time of the occurrence.

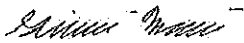
Closing

Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. Your acceptance of this proposal may be indicated by signing and returning the enclosed Proposal Acceptance Form. Our work will be done in accordance with the attached Terms and Conditions which is made a part of this proposal.

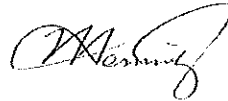
Thank you for the opportunity to submit this proposal to provide services and serve as your consultant. We look forward to working with you on this project, and to hopefully serve as your consultant in the future. If you have any questions, or if we can be of any additional service, please contact us at (386) 944.9588.

Respectfully submitted,

ECS FLORIDA, LLC



Giovanni Mafiol
Geotechnical Project Manager



Maximilian Kemnitz, P.E.
Senior Geotechnical Project Manager

Attachments: Proposal Acceptance Form
ECS Terms and Conditions of Service



**PROPOSAL ACCEPTANCE FORM
ECS FLORIDA, LLC****Project Name:** Proposed Water Main Project**Location:** Lambert Avenue, Flagler Beach, Florida 32136**Geotechnical Engineering Evaluation:** \$3,500**(1) Provisional Fee – 8 SPT Borings @ 8 feet:** \$800**(2) Provisional Fee – 2 SPT Borings @ 20 feet:** \$900**Provisional Fee, Private Utility Locator:** \$1,500 (one day) ☐ Yes ☐ No

Please complete and return this Proposal Acceptance Form to ECS as shown at the bottom of this form. By signing and returning this form, you are authorizing ECS to proceed, providing ECS permission to enter the site, and making this proposal the agreement between ECS and Client. Your signature also indicates you have read this document and the Terms and Conditions of Service in their entirety and agree to pay for services as above set forth.

CLIENT AND BILLING INFORMATION**Name of Client:** _____**Contact Person:** _____**Telephone No.:** _____**E-mail:** _____**Responsible for Payment****Approval of Invoice (if different)****Contact Name:** _____**Company Name:** _____**Address:** _____**Address:** _____**City, State, Zip:** _____**Telephone No.:** _____**Fax No:** _____**E-mail Address:** _____

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

Name	E-mail Address	Phone Number	Fax Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Instructions: _____**Client Signature: x** _____ **Date:** _____

ECS FLORIDA, LLC TERMS AND CONDITIONS OF SERVICE

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

- 1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Services on the Project and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants
- 2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S agents, contractors and consultants ("Contractors"). CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.
- 3.0 STANDARD OF CARE**
- 3.1** In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guarantee of any nature whatsoever.
- 3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.
- 3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.
- 3.4** If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable laws or regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.
- 4.0 CLIENT DISCLOSURES**
- 4.1** Where the Services requires ECS to penetrate a surface, CLIENT shall furnish and/or shall direct CLIENT'S or CLIENT'S Contractors to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.
- 4.2** "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.
- 4.3** If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees or fee schedule to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S Contractors, including such information that becomes incorporated into ECS documents.
- 6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. CLIENT agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' additional services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
- 7.1** CLIENT warrants that it possesses the authority to grant ECS right of entry to the site for the performance of Services. CLIENT hereby grants ECS and its agents, subcontractors and/or subconsultants ("Subconsultants"), the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS and its Subconsultants harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

- 7.2** CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.
- 7.3** ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment will cause damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.
- 7.4** CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.
- 8.0 UNDERGROUND UTILITIES**
- 8.1** ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.
- 8.2** CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.
- 8.3** CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' Subconsultant's request for utility marking services made in accordance with local industry standards.
- 9.0 SAMPLES**
- 9.1** Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the first issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.
- 9.2** Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing by-products in accordance with applicable laws and regulations.
- 10.0 ENVIRONMENTAL RISKS**
- 10.1** When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
- 10.2** When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.
- 10.3** Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
- 10.4** In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this Agreement to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.
- 10.5** Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.
- 10.6** CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

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

12.0 SAFETY

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

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

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

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

15.0 BILLINGS AND PAYMENTS

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

limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.

- 15.2 CLIENT agrees that all professional fees and other unit rates may be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the scope of Services, professional fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' Invoices, and that timely payment is a material consideration for this Agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an Invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice date. CLIENT agrees to pay the undisputed amount of such Invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of Invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT's client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

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

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

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

18.0 LIMITATION OF LIABILITY

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

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

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

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

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

19.0 INDEMNIFICATION

- 19.1 Subject to Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent

- acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)
- 19.2 To the fullest extent permitted by law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ("Damages") caused in whole or in part by the acts, errors, or omissions of the CLIENT or CLIENT's employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportionate 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 in any lawsuit brought under this Agreement.
- 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.
- 21.3 **PURSUANT TO FLA. STAT. SECTIONS 558.002 AND 558.0035, CLIENT AGREES THAT AN INDIVIDUAL EMPLOYEE OR AGENT OF ECS MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE FOR ACTS OR OMISSIONS ARISING OUT OF THE SERVICES.**
- 22.0 **THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the Agreement. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 **DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen calendar (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.
- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.
- 24.0 **CURING A BREACH**
- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 25.0 **TERMINATION**
- 25.1 CLIENT or ECS may terminate this Agreement for breach, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 **TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this Agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.
- 27.0 **ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 **SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 **SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the Agreement.
- 30.0 **TITLES; ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms.
- 30.2 These Terms together with the Proposal, including all exhibits, appendices, and other documents appended to it, constitute the entire agreement between CLIENT and ECS ("Agreement"). CLIENT acknowledges that all prior understandings and negotiations are superseded by this Agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the Agreement shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT's acceptance of this Proposal and these Terms and their agreement to be fully bound to them. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.