

Proposal QTB178289

Mr. Robert Mattei  
Grand Rapids Economic Development Authority  
City of Grand Rapids  
420 North Pokegama Avenue  
Grand Rapids, MN 55744

Re: Proposal for a Geotechnical Evaluation  
Proposed Warehouse Development  
PIDs 910331410, 910331430, 910331406, and 910334120  
East of Airport Road and Southeast 29th Street  
Grand Rapids, Minnesota

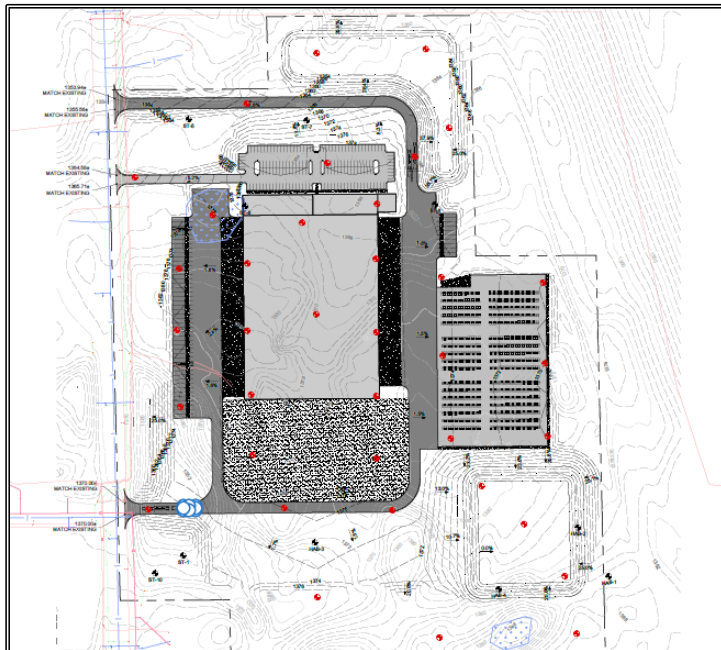
Dear Mr. Mattei:

Braun Intertec Corporation respectfully submits this proposal to complete a geotechnical evaluation for a geotechnical evaluation at the proposed warehouse site located east of Airport Road and South 29th Street in Grand Rapids, Minnesota.

## Project Information

Per the RFP provided by Ryan Companies US, Inc., we understand the project will include construction of a warehouse facility that will encompass a footprint area of about 220,000 square feet. Figure 1 includes a site conception illustration (provided to us by Ryan Companies US, Inc.).

### Figure 1. Proposed Site Concept



Loading docks will be located along the western and eastern portions of the building. An exterior storage area (typically pallet-type of storage) will be located east of the proposed building. An additional storage lot will also be located south of the proposed building. The project will also include associated light and heavy-duty pavements, utilities, and stormwater management features.

## **Previous Experience and Geotechnical Information**

In the recent past, our firm has performed standard penetration test borings and hand auger borings on this site. We will incorporate that previous data into this geotechnical evaluation.

## **Purpose**

The purpose of our geotechnical evaluation will be to characterize subsurface geologic conditions at selected exploration locations, evaluate their impact on the project, and provide geotechnical recommendations for the design and construction of the proposed building, storage lots, pavements, utilities, and stormwater management features.

## **Scope of Services**

We propose the following tasks to help achieve the stated purpose. If we encounter unfavorable or unforeseen conditions during the completion of our tasks that lead us to recommend an expanded scope of services, we will contact you to discuss the conditions before resuming our services.

## **Site Access**

Based on our review of aerial photographs, and from our previous experiences on this site, it appears that the site will require an off-road carrier-mounted drill rig.

Figure 2 includes a recent aerial photograph of the sites (obtained from Itasca County GIS). The approximate limits of the parcels are also shown in Figure 2.

**Figure 2. Recent Aerial Photograph of Site Conditions**



As shown in Figure 2, the bulk of the site is densely wooded with mature trees. From our previous experiences on this site, a significant amount of tree clearing will be needed in order to access the proposed soil boring locations. We have included an alternate cost to subcontract that service. Otherwise, we assume that services will be coordinated by you.

Depending on access requirements, ground conditions or potential utility conflicts, our field crew may alter the exploration locations from those proposed to facilitate accessibility.

Our drilling activities may also impact the vegetation and may rut the surface to access boring locations. Restoration of vegetation and turf is not part of our scope of services.

### Staking

We will stake prospective subsurface exploration locations, as jointly selected by our firm and Ryan Companies US, Inc., and obtain surface elevations at those locations using GPS (Global Positioning System) technology. For purposes of linking the GPS data to an appropriate reference, we request that you provide CAD files indicating location/elevation references appropriate for this project, or give us contact information for the consultant that might have such information.

### Utility Clearance

Prior to drilling or excavating, we will contact Gopher State One Call and arrange for notification of the appropriate utility vendors to mark and clear the exploration locations of public underground utilities. You, or your authorized representative, are responsible to notify us before we begin our work of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

### Penetration Test Borings

We propose to drill thirty-eight standard penetration test borings for the project. Table 1 provides a summary of the proposed boring locations and depths.

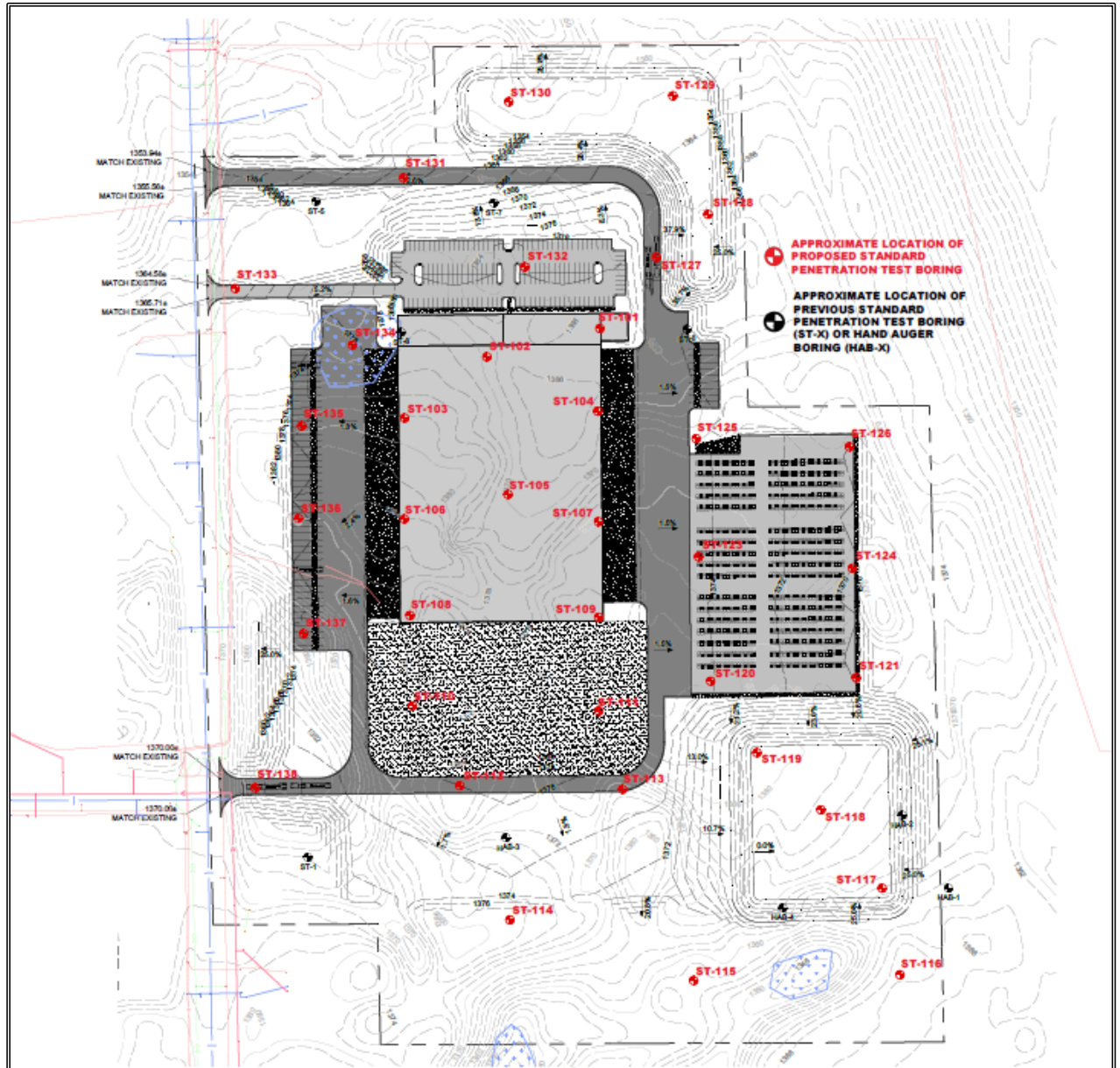
**Table 1. Summary of Proposed Borings**

Location	Quantity	Nominal Depth (feet)	Extension (feet)
Building Pad	5	20	100
Building Pad	2	25	50
Building Pad	2	35	70
East Storage Lot	6	20	120
South Storage Lot	3	20	60
Stormwater Management	6	25	150
Pavements	11	15 (14 1/2)	165
Site	3	20	60
Totals	38	—	775

The proposed boring locations are shown in Figure 3.



**Figure 3. Approximate Boring Locations**



We will perform standard penetration tests at 2 1/2-foot vertical intervals to a depth of about 15 feet, and at 5-foot intervals at greater depths.

We have also made provisions to obtain six thin-walled tube samples of the soils encountered for laboratory testing.

We will collect bag samples from the auger cuttings of several of the borings for laboratory testing.

If the intended boring depths do not extend through unsuitable material, we will extend the borings at least 5 feet into suitable material at greater depths. The additional information will help evaluate such issues as excavation depth, consolidation settlement, and foundation alternatives, among others. If we identify a need for deeper (or additional) borings, we will contact you prior to increasing our total estimated drilled footage and submit a Change Order summarizing the anticipated additional effort and the associated cost, for your review and authorization.

### **Groundwater Measurements**

If the borings encounter groundwater during or immediately after drilling of each boring, we will record the observed depth on the boring logs.

### **Minnesota Department of Health Notification**

We are planning for the borings to be 25 feet or deeper. Therefore, the Minnesota Statutes requires us to both (1) submit to the Minnesota Department of Health (MDH) by mail a "Sealing Notification Form," and (2) submit a Sealing Record after our completion of the borings. The Sealing Notification Form requires a signature of the current property owner, or their agent, and we need to submit this to the MDH prior to our mobilization to the site. We are attaching a copy of the Sealing Notification Form at the end of this proposal for your signature. Our proposal includes the fees for the MDH Sealing Notification and the Sealing Record.

### **Borehole Abandonment**

We will backfill our exploration locations immediately after completing the drilling (sounding/coring) at each location. Minnesota Statutes require sealing temporary borings that are 15 feet deep or deeper. Based on our proposed subsurface characterization depths, we will seal 610 linear feet of borehole with grout.

The attached Project Proposal shows the fees associated with the sealing.

Sealing boreholes with grout will prevent us from disposing of auger boring cuttings in the completed boreholes. Unless you direct us otherwise, we intend to thin-spread the cuttings around the boreholes. If we cannot thin-spread cuttings, we will put them in a container left on site. We can provide off-site disposal of the cuttings for an additional fee.

Over time, subsidence of borehole backfill may occur, requiring releveling of surface grades. We are not assuming responsibility for re-leveling after we complete our fieldwork.

### **Sample Review and Laboratory Testing**

We will return recovered samples to our laboratory, where a geotechnical engineer will visually classify and log them. To help classify the materials encountered and estimate the engineering properties necessary to our analyses, we have budgeted to perform the following laboratory tests.

**Table 2. Laboratory Tests**

Test Name	Number of Tests	ASTM Test Method	Purpose
Moisture content	70	D2216	Soil classification, moisture condition, and engineering properties
Atterberg limits	5	D4318	Soil plasticity, shrink/swell potential, engineering parameters, suitability of soils for reuse
Percent passing #200 sieve	20	D1140	Soil classification, and evaluate frost susceptibility
Sieve analysis	5	D1140	Soil classification
Organic content	5	D2974	Evaluate suitability of soils for reuse
Standard Proctor	2	D698	Determine maximum dry density and optimum moisture content of soil
California Bearing Ratio	2	D1883	Engineering parameter used in designing pavements
Corrosion Potential Suite	1	Various	Corrosion potential

We will determine the actual laboratory testing for the project depending on the encountered subsurface conditions. If we identify a laboratory testing program that exceeds the budget included in this proposal but provides additional value to the project, we will request authorization for the additional fees through a Change Order.

### **Engineering Analyses**

We will use data obtained from the subsurface exploration and laboratory tests to evaluate the subsurface profile and groundwater conditions, and to perform engineering analyses related to structure and pavement design and performance.

### **Report**

We will prepare a report including:

- A CAD sketch showing the exploration locations.
- Logs of the previous and proposed describing the materials encountered and presenting the results of our groundwater measurements and laboratory tests.
- A summary of the subsurface profile and groundwater conditions.
- Discussion identifying the subsurface conditions that will impact design and construction.

- Discussion regarding the reuse of on-site materials during construction.
- Recommendations for preparing structure and pavement subgrades, and the selection, placement, and compaction of fill.
- Recommendations for the design and construction of footings, interior and exterior slabs, pavements, utilities, and stormwater management features.

We will only submit an electronic copy of our report to you unless you request otherwise. At your request, we can also send the report to additional project team members.

## **Schedule**

We anticipate performing our work according to the following schedule.

- Drill rig mobilization: Within about five weeks following receipt of written authorization
- Field exploration: Seven days on site to complete the work
- Draft report submittal: About three weeks after completion of the field work
- Final report submittal: After the draft report has been discussed with the project team and comments have been addressed

If we cannot complete our proposed scope of services according to this schedule due to circumstances beyond our control, we may need to revise this proposal prior to completing the remaining tasks.

## **Fees**

We will furnish the services described in this proposal on a time and materials basis for an estimated fee of \$45,959 (Phase 1). We are attaching a tabulation showing hourly and/or unit rates associated with our proposed scope of services. As shown in the attached tabulation, and as discussed previously, we have included an alternate subcontractor cost of \$10,000 to clear trees (with the alternate, bringing the total up to \$55,959).

Please note that our drilling/field services were budgeted to occur within our normal work hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. If conditions occur that require us to work outside of these hours, we will request additional fees to cover our additional overtime costs.

Our work may extend over several invoicing periods. As such, we will submit partial progress invoices for work we perform during each invoicing period.



Our fees do not include potential costs due to the need for snow plowing, towing, stand-by time, or work that is not included in the above Scope of Services. We will charge costs for snow plowing or towing (if necessary) at a rate of 1.15 times the actual cost. For stand-by time (defined as time spent by our field crew due to circumstances that are beyond the control of our field crew or its equipment, or beyond the scope of services indicated above), we will charge a rate of \$293 per hour.

### **General Remarks**

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. Please sign and return a copy to us in its entirety.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Ryan Benson at 612.384.5954 ([rbenson@braunintertec.com](mailto:rbenson@braunintertec.com)) or Joel Kurpius at 612.221.2497 ([jkurpius@braunintertec.com](mailto:jkurpius@braunintertec.com)).

Sincerely,

BRAUN INTERTEC CORPORATION



Ryan M. Benson, PE  
Director, Principal Engineer



Joel C. Kurpius, PE  
Senior Engineer

Attachments:

Project Proposal Tabulation  
MDH Notification Form  
General Conditions (1/1/2018)

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The proposal is accepted, and you are authorized to proceed (please select).

- ☐ Geotechnical Evaluation (\$45,959)
- ☐ Alternate for Subcontracted Tree Clearing (\$10,000)

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**Authorizer's Firm**

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**Authorizer's Signature**

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**Authorizer's Name (please print or type)**

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**Authorizer's Title**

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**Date**

# Project Proposal

QTB178289

Grand Rapids Warehouse

## Client:

City of Grand Rapids  
Robert Mattei  
Grand Rapids Economic Development Authority  
420 North Pokegama Avenue  
Grand Rapids, MN 55744

## Work Site Address:

East of Airport Road and Southeast 29th Street  
Grand Rapids, MN 55744

## Service Description:

Geotechnical Evaluation

	Description	Quantity	Units	Unit Price	Extension
<b>Phase 1</b>		<b>Geotechnical Evaluation</b>			
<b>Activity 1.1</b>	<b>Site Layout - Staking - Utility Clearance - CADD</b>				<b>\$1,818.00</b>
205	Site layout and utility clearance	6.00	Hour	100.00	\$600.00
1862	Utility Trip Charge	1.00	Each	138.00	\$138.00
288	Project Assistant	3.00	Hour	90.00	\$270.00
371	CADD/Graphics Operator	3.00	Hour	130.00	\$390.00
5099	Trimble R8 Rover (horizontal and vertical), per hour	6.00	Each	70.00	\$420.00
<b>Activity 1.2</b>	<b>Drilling Services</b>				<b>\$25,304.00</b>
9100	Flotation Tire Drill Rig and Crew, per hour	66.50	Each	350.00	\$23,275.00
1029	Standby time, per hour		Each	293.00	\$0.00
9730	Grout with bentonite, materials per foot	610.00	Each	2.50	\$1,525.00
1022	Thin-walled sample tubes (ASTM D 15 87), each	6.00	Each	34.00	\$204.00
1073	MDH Sealing Notification (pre-drilling)	1.00	Each	100.00	\$100.00
9903	MDH Sealing Record Reporting (post-drilling)	1.00	Each	200.00	\$200.00
<b>Activity 1.3</b>	<b>Geotechnical Soil Tests</b>				<b>\$6,379.00</b>
1152	Moisture content, per sample	70.00	Each	18.00	\$1,260.00
1156	Atterberg Limits LL and PL, Single-Point, per sample	5.00	Each	131.00	\$655.00
1166	Loss by Washing Through #200 Sieve, per sample	20.00	Each	88.00	\$1,760.00
1162	Sieve Analysis with 200 wash, per sample	5.00	Each	150.00	\$750.00
1174	Organic Content, per sample	5.00	Each	88.00	\$440.00
1318	Moisture Density Relationship (Standard), per sample	2.00	Each	192.00	\$384.00
1734	California Bearing Ratio, per molded specimen	2.00	Each	365.00	\$730.00
SUB1	Corrosion Potential Suite	1.00	Each	400.00	\$400.00
<b>Activity 1.4</b>	<b>Evaluation/Analysis/Reports</b>				<b>\$12,458.00</b>
138	Project Assistant	10.00	Hour	90.00	\$900.00
125	Project Control Specialist	3.00	Hour	146.00	\$438.00
126	Project Engineer	40.00	Hour	178.00	\$7,120.00
128	Senior Engineer	20.00	Hour	200.00	\$4,000.00
<b>Phase 1 Total:</b>					<b>\$45,959.00</b>
<b>Phase 2</b>		<b>Alternate: Subcontracted Tree Clearing</b>			
<b>Activity 2.1</b>	<b>Subcontracted Tree Clearing</b>				<b>\$10,000.00</b>
SUB	Subcontractor	1.00	Each	10,000.00	\$10,000.00
<b>Phase 2 Total:</b>					<b>\$10,000.00</b>

**Proposal Total: \$55,959.00**



**Braun Intertec Corporation**  
11001 Hampshire Avenue S  
Minneapolis, MN 55438

Phone: 952.995.2000  
Fax: 952.995.2020  
Web: [braunintertec.com](http://braunintertec.com)

June 2, 2023

# Proposal QTB178289

Mr. Robert Mattei  
Grand Rapids Economic Development Authority  
City of Grand Rapids  
420 North Pokegama Avenue  
Grand Rapids, MN 55744

Re: Minnesota Department of Health Well Sealing Notification Form  
Proposed Warehouse Development  
PIDs 910331410, 910331430, 910331406, and 910334120  
East of Airport Road and Southeast 29th Street  
Grand Rapids, Minnesota

Dear Mr. Mattei:

Please have the property owner, representative or agent complete the “Well Owner” section only of the Minnesota Department of Health (MDH) Well Sealing Notification form below and return it to Braun Intertec along with the signed proposal. We will complete the remainder of the form and submit it to the MDH.

**NOTE:** This form must be completed and returned to Braun Intertec prior to us scheduling the mobilization of our equipment and crews to the project site.

<b>WELL SEALING NOTIFICATION-WELL SEALING NOTIFICATION IS VALID FOR 18 MONTHS</b> <b>Send notification form and payment (check, money order, or credit card information) to:</b> Minnesota Department of Health, Well Management Section, P.O. Box 64502, St. Paul, Minnesota 55164-0502. <b>ATTN: CASHIER</b>					Minnesota Unique Well No. or W-series No. (Leave blank if not known)					<b>Minnesota Well and Boring Sealing No.</b>						
<b>Well Management Section Fax Number: (651) 201-4599.</b>										<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>H</b> </div>						
<input type="checkbox"/> Well Sealing Notification (269)										Check Box If: <input type="checkbox"/> Well is Multiple Cased <input type="checkbox"/> Larger than 8-inch Inside Diameter						
Check Well Type: <input type="checkbox"/> Water-Supply Well <input type="checkbox"/> Monitoring Well <input type="checkbox"/> Other										Card Type: <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover    Exp. Date _____ Print Cardholder Name _____ Card Number _____    3-Digit Security Code (Printed on back side of card.) _____ Authorized Signature _____						
<b>WELL LOCATION</b>	County			Township Name			Township No.		Range No.		Section No.		Fraction (sm. → lg.) <div style="display: flex; justify-content: space-around; width: 100%;"> <span>1/4</span> <span>1/2</span> <span>3/4</span> </div>			
	Well Location Address						City		State		Zip Code		Est. Depth		Casing Diameter	
<b>WELL OWNER</b>	Well Owner Name (Print)										Daytime Telephone Number (       )					
	Well Owner Street Address								City		State		Zip Code			
	Well Owner Signature												Date			
<b>WELL CONTRACTOR</b>	Well Contractor Company Name (Print)						Certified Rep. Signature						Date		Company License No.	

Failure to provide proper identification and fee prior to the beginning of well sealing is a violation of Minnesota Statutes, Chapter 1031, and may result in the assessment of an administrative penalty. Notification is not required to seal a boring.

## Section 1: Agreement

**1.1** Our agreement with you consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between you and us. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

**1.2** The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

**1.3** In the event you use a purchase order or other documentation to authorize our scope of work ("Services"), any conflicting or additional terms are not part of this Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to terminate this Agreement without liability to you or others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

## Section 2: Our Responsibilities

**2.1** We will provide Services specifically described in this Agreement. You agree that we are not responsible for services that are not expressly included in this Agreement. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

**2.2** In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction. If during the one year period following completion of Services it is determined that the above standards have not been met and you have promptly notified us in writing of such failure, we will perform, at our cost, such corrective services as may be necessary, within the original scope in this Agreement, to remedy such deficiency. Remedies set forth in this section constitute your sole and exclusive recourse with respect to the performance or quality of Services.

**2.3** We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and further that site conditions may vary over distance or change over time.

**2.4** Our duties do not include supervising or directing your representatives or contractors or commenting on, overseeing, or providing the means and methods of their services unless expressly set forth in this Agreement. We will not be responsible for the failure of your contractors, and the providing of Services will not relieve others of their responsibilities to you or to others.

**2.5** We will provide a health and safety program for our employees, but we will not be responsible for contractor, owner, project, or site health or safety.

**2.6** You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

**2.7** Unless a fixed fee is indicated, our price is an estimate of our project costs and expenses based on information available to us and our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

## Section 3: Your Responsibilities

**3.1** You will provide us with prior environmental, geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed Services.

**3.2** You will provide access to the site. In the performance of Services some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of damage in the estimated charges.

**3.3** You agree to provide us, in a timely manner, with information that you have regarding buried objects at the site. We will not be responsible for locating buried objects at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, losses, penalties and expenses (including attorney fees) involving buried objects that were not properly marked or identified or of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others furnished to us.*

**3.4** You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any work site or in a sample provided to us. You agree to provide us with information in your possession or control relating to such materials or samples. If we observe or suspect the presence of contaminants not anticipated in this Agreement, we may terminate Services without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

**3.5** Neither this Agreement nor the providing of Services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous substances. *You agree to hold us harmless, defend, and indemnify us from any damages, claims, damages, penalties or losses resulting from the storage, removal, hauling or disposal of such substances.*

**3.6** Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless expressly set forth otherwise in this Agreement.

**3.7** You agree to make all disclosures required by law. In the event you do not own the project site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, penalties, or losses and expenses, including attorney fees, related to failures to make disclosures, disclosures made by us that are required by law, and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.*

## Section 4: Reports and Records

**4.1** Unless you request otherwise, we will provide our report in an electronic format.

**4.2** Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property. We hereby grant you a license to use the reports and related information we provide only for the related project and for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. *You agree to indemnify, defend, and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use.*

**4.3** If you do not pay for Services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

**4.4** Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your property. They may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

**4.5** Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.



## Section 5: Compensation

**5.1** You will pay for Services as stated in this Agreement. If such payment references our Schedule of Charges, the invoicing will be based upon the most current schedule. An estimated amount is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

**5.2** You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices upon receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

**5.3** If you direct us to invoice a third party, we may do so, but you agree to be responsible for our compensation unless the third party is creditworthy (in our sole opinion) and provides written acceptance of all terms of this Agreement.

**5.4** Your obligation to pay for Services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, your successful completion of any project, receipt of payment from a third party, or any other event. No retainage will be withheld.

**5.5** If you do not pay us in accordance with this Agreement, you agree to reimburse all costs and expenses for collection of the moneys invoiced, including but not limited to attorney fees and staff time.

**5.6** You agree to compensate us in accordance with our Schedule of Charges if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

**5.7** If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work changes, or if changed labor conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice, the schedule will be extended for each day of delay, and we will be compensated for costs and expenses incurred in accordance with our Schedule of Charges.

**5.8** If you fail to pay us in accordance with this Agreement, we may consider the default a total breach of this Agreement and, at our option, terminate our duties without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

**5.9** In consideration of our providing insurance to cover claims made by you, you hereby waive any right to offset fees otherwise due us.

## Section 6: Disputes, Damage, and Risk Allocation

**6.1** Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s)

attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

**6.2** *Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of business opportunity, loss of profit or revenue, loss of product or output, or business interruption.*

**6.3** You and we agree that any action in relation to an alleged breach of our standard of care or this Agreement shall be commenced within one year of the date of the breach or of the date of substantial completion of Services, whichever is earlier, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute. We will not be liable unless you have notified us within 30 days of the date of such breach and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services. Should you fail to meet the conditions above, you agree to fully release us from any liability for such allegation.

**6.4** *For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for Services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of this Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken.* This increased fee is not the purchase of insurance.

**6.5** *You agree to indemnify us from all liability to others in excess of the risk allocation stated herein and to insure this obligation. In addition, all indemnities and limitations of liability set forth in this Agreement apply however the same may arise, whether in contract, tort, statute, equity or other theory of law, including, but not limited to, the breach of any legal duty or the fault, negligence, or strict liability of either party.*

**6.6** This Agreement shall be governed, construed, and enforced in accordance with the laws of the state in which our servicing office is located, without regard to its conflict of laws rules. The laws of the state of our servicing office will govern all disputes, and all claims shall be heard in the state or federal courts for that state. Each of us waives trial by jury.

**6.7** No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual officers or employees.

## Section 7: General Indemnification

**7.1** *We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.*

**7.2** To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

**7.3** You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

## Section 8: Miscellaneous Provisions

**8.1** We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our negligence.

**8.2** You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

**8.3** Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

**8.4** This Agreement may be terminated early only in writing. You will compensate us for fees earned for performance completed and expenses incurred up to the time of termination.

**8.5** If any provision of this Agreement is held invalid or unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

**8.6** No waiver of any right or privilege of either party will occur upon such party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.