

October 28, 2025

Proposal QTB223756

Robert Mattei

City of Grand Rapids – Grand Rapids EDA

420 North Pokegama Avenue
Grand Rapids, MN 55744

Re: Proposal for Environmental Consulting Services
Former Itasca County Farm Services Co-op
900 Northwest 4th Street
Grand Rapids, Minnesota

Dear Mr. Mattei:

Braun Intertec Corporation is pleased to present this proposal for environmental consulting services related to the identification of agricultural chemicals in the soil and groundwater at the Site, some of which exceed Minnesota Department of Agriculture (MDA) regulated criteria. The purpose of the project is to investigate contamination and obtain MDA liability assurance letters with the eventual goal of demolition of the Site building and preparation of the Site for future development.

Our proposed services will consist of the following tasks:

1. Enrollment into the MDA Voluntary Investigation and Cleanup Program (Ag VIC),
2. Conduct an Agricultural Environmental Site Assessment (AgESA) in general accordance with Minnesota Department of Agriculture (MDA) Guidance Document 14.
3. MDA Site Visit,
4. Prepare an MDA Remedial Investigation Work Plan, and
5. Project management and correspondence.

This proposal will outline the Scope of Services and provide estimated costs for the proposed work.

Background

In 2022 and 2023, Stantec Consulting Services Inc. (Stantec) completed a Phase I ESA (non-MDA compliant) and a Phase II ESA of the Site. At the time of the assessments, the Site building was vacant and was formerly owned and operated by the Itasca County Farm Services Co-op as a full service agronomy facility that previously included railroad loading/unloading operations. During the Phase II ESA, petroleum impacted soil and groundwater was encountered on the western portion of the Site, and agricultural chemicals were identified in the soil beneath the current Site building at concentrations exceeding MDA cleanup standards.



Agricultural chemicals were also identified in the groundwater, with exceedances detected on the central and eastern portions of the Site.

Scope of Services

Task 1 – AgVIC Enrollment

As part of this task, Braun Intertec will assist the City of Grand Rapids – Grand Rapids EDA with enrolling the Site into the MDA VIC Program (Ag VIC). This will include corresponding with the Client, preparing a draft of the application form, and submitting the final application electronically to Mr. Greg Hanson (greg.hanson@state.mn.us) with the MDA Incident Response Unit.

Task 2 – AgESA

In our experience, the previous Phase I ESA will not meet the requirements of the MDA for environmental assessment. The AgESA is completed in general conformance with the scope and limitations of ASTM International Standard Practice E1527-21 (ASTM E1527-21) and 40 CFR Part 312 for Phase I ESAs, and adds additional information per MDA Requirements:

- Review information provided by the User, such as Preliminary Title Commitments, Conditions of Title, or Title Abstracts to determine if there are environmental liens or activity and use limitations associated with the Site.
- Review of readily available geological information pertaining to the Site area to evaluate the physical setting of the Site.
- Obtain and review an ASTM E1527-21 compliant regulatory database report from a national vendor to determine if the Site and/or surrounding properties are listed on databases that indicate known or potential recognized environmental conditions. The scope of this review does not include obtaining and reviewing specific regulatory files related to any identified database listings. If, in our opinion, a file review is warranted to evaluate the existence of a recognized environmental condition, we will contact Client to discuss the associated out of scope cost to obtain and review that information.
- Review of readily available historical records (e.g., fire insurance maps, topographic maps, aerial photographs, and city directories) to develop a history of the previous uses of the Site, adjoining properties, and surrounding area (as necessary), to evaluate the likelihood of past uses having led to recognized environmental conditions.
- Reconnaissance of the Site and observations of adjoining properties to identify current uses or indications of past use that may represent a recognized environmental condition.
- Interview of persons familiar with the Site and local government officials, as available, to obtain information pertaining to the current and past use of the Site and to determine if there are any known conditions indicative of a recognized environmental condition.



- Preparation of an AgESA report that provides a summary of the information obtained through a review of the items above and a summary of our findings and conclusions.

The AgESA is supplemented with additional MDA requirements as described in Guidance Document 14 which includes the following:

- AgSPILLS environmental database request including the target property and a 0.5-mile radius.
- Review of MDA What's In My Neighborhood and County Spills Report.
- Facility Specific Data including MDA file review request, high-risk area evaluation, product inventory lists and product quantities.
- Other agency source file reviews such as MPCA Leaking Underground Storage Tanks.

A draft AgESA will initially be provided to the MDA for review and approval. The MDA will subsequently provide comments and/or request revisions prior to finalizing the AgESA. After finalization of the AgESA a site visit with the MDA will be needed as discussed further below.

User Requirements

As part of the AgESA, the “User” should provide available information to Braun Intertec (the Environmental Professional) to help identify the possibility of recognized environmental conditions in connection with the Site. A “User” is the party seeking to use ASTM E1527-21 to complete an AgESA and may include, without limitation, a potential purchaser, tenant or owner of the property, a lender, and/or a property manager. A User Questionnaire and Client Information Request Form have been provided along with this proposal.

Each User is responsible for providing the following in a timely manner:

- User Questionnaire completed in its entirety. The User Questionnaire will be attached to the final report. If multiple Users are requesting reliance on the AgESA, please provide a User Questionnaire completed by each of the appropriate entities.
- Client Information Request Form to include Site contact information for an individual who can provide Site access and owner representative contact information for an individual who can provide current Site information.
- All existing environmental reports, letters, and any information pertinent to the environmental status of the Site.

Assessment Limitations

Braun Intertec’s scope of services does not include obtaining land title records or judicial records for environmental liens or activity use limitations (AULs). The User should provide the title documents or related information regarding environmental liens or AULs on the User Questionnaire. At the request of the Client, the ASTM E1527-21 Compliant Environmental Lien Search (back to 1980) can be obtained through a third-party vendor for an additional fee.



The assessment will not include evaluation of non-scope items such as, but not limited to, potential asbestos-containing building materials, wetlands, lead-based paint, or vapor encroachment screening as defined in ASTM E2600-15.

Upon completion of the Phase I ESA, Braun Intertec does not guarantee qualification for Landowner Liability Protections (LLP). Our proposed scope of work is consistent with “good commercial and customary practices” (as defined by ASTM E1527-21) conducted to identify recognized environmental conditions.

Task 3 - MDA Site Visit

Once the AgESA is finalized detailing each of the High-Risk Areas a site visit will be conducted with the MDA Project Manager and Hydrologist, the client, and Braun Intertec to discuss the AgESA findings and develop a preliminary Remedial Investigation Work Plan. The date of the site visit will be coordinated in advance with all parties.

Task 4 - MDA Remedial Investigation Work Plan

A draft Remedial Investigation Work Plan will be prepared in accordance with MDA Guidance Document 9 after the MDA Site Visit. The MDA will subsequently review and provide comments and/or request revisions prior to implementing the Work Plan. In general, each of the High-Risk Areas identified in the AgESA will require investigation of soil and/or groundwater to determine potential contaminant concentrations. In the event groundwater contamination is identified the MDA may require the installation of monitoring wells and associated long-term monitoring.

A subsequent proposal will be prepared after the final RI Work Plan has been approved by the MDA.

Task 5 – Project Management and Correspondence

Braun Intertec will attend virtual meetings and conference calls with the City of Grand Rapids – Grand Rapids EDA and MDA representatives as the project proceeds. In addition, project management tasks will be performed throughout the project to ensure that the project goals and challenges are communicated to the client in a timely fashion.

This proposal includes up to four 1-hour virtual meetings and/or phone calls. If additional meetings are requested and/or required, they will be billed at the rates listed in the Cost Estimate section of this proposal.

Cost

Braun Intertec will provide the services described herein on an hourly and unit-cost basis. The estimated cost breakdown summary is listed below.



Service Description	Cost
AgVIC Enrollment	\$ 925
Ag Environmental Site Assessment	\$ 3,825
MDA Site Visit	\$ 1,100
Remedial Investigation Work Plan	\$ 3,350
Project Management and Correspondence	\$ 2,000
Estimated Total	\$11,200

Braun Intertec will begin the project upon receipt of your authorization. The estimated cost of **\$11,200** presented is based on the Scope of Services described herein and the assumption that the proposal will be authorized within 30 days and that the project will be completed within the proposed schedule. This estimated total will not be exceeded by more than 10 percent without additional authorization.

This cost estimate was developed with the understanding that the scope of services defined herein will be performed during our normal business hours of 7:00 a.m. to 5:00 p.m., Monday through Friday. Services that we are asked to provide outside our normal business hours will be invoiced at 1.25 times the listed hourly rate. Services provided on Sunday or legal holidays will be invoiced at 1.5 times the listed hourly rate. You will be billed only for services provided on a time and material basis.

Additional efforts for meetings, consulting, and/or modifications to the final report, or any additional services beyond the scope stated herein, will be billed at our fee schedule rates.

Schedule

The AgESA report will be initiated within 1-week of authorization. We estimate a Draft AgESA report will be completed within 45 business days from the date of authorization. Once the AgESA has been finalized, we will assist you in enrolling the Site into the AgVIC program. The MDA site walk will depend on the MDA staff availability but is estimated to occur within one month after AgESA completion (assuming snow cover is not present at that time). We estimate a draft RI workplan will be completed within 3 weeks of the MDA Site walk.

If the proposed Scope of Services cannot be completed according to this schedule due to circumstances beyond control, Braun Intertec will contact you to discuss changes to the project schedule.



General Remarks

We based the proposed fee on the scope of services described and the assumption that you will authorize our services within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement. To accept this proposal and authorize us to proceed, please sign and return it to us in its entirety. Additionally, please complete and return the User Questionnaire/Client Information Request Forms.

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

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Aaron Volker at 320.253.9940 (avolker@braunintertec.com) or Ted Hubbes at 218.263.8869 (thubbes@braunintertec.com).

Sincerely,

Braun Intertec Corporation

Aaron P. Volker
Project Scientist

Ted R. Hubbes, PG, CHMM
Senior Manager, Senior Scientist

Attachments:

General Conditions (11/4/2024)

ASTM User Questionnaire (Separate File)

Client Information Request Form (Separate File)

The proposal is accepted, and Braun Intertec is authorized to proceed.

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

BRAUN INTERTEC GENERAL CONDITIONS

SECTION 1: AGREEMENT

1.1 Agreement. This agreement consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between Consultant and Client and supersedes all prior negotiations, representations or agreements, either written or oral.

1.2 Parties to the Agreement. The parties to this Agreement are the Braun Intertec entity ("Consultant") and the client ("Client") as described in the accompanying written proposal or authorization. Consultant and Client may be individually referred to as a Party or collectively as the Parties.

SECTION 2: SCOPE OF SERVICES

2.1 Services. Consultant will provide services ("Services") in connection with the project ("Project") which are specifically described in this Agreement. Client understands and agrees that Consultant's Services are limited to those which are expressly set forth in this Agreement.

2.2 Additional Services. Any Services not specifically set forth in the Agreement constitute "Additional Services." Additional Services must be agreed upon in writing by the Parties prior to performance of the Additional Services and may entitle Consultant to additional compensation and schedule adjustments. Additional compensation will be based upon Consultant's then current rates and fees.

SECTION 3: PERFORMANCE OF SERVICES

3.1 Standard of Care. Consultant will perform its professional Services consistent with the degree of care and skill exercised by members of Consultant's profession performing under similar circumstances at the same time and in the same locality in which the professional Services are performed. CONSULTANT DISCLAIMS ALL STATUTORY, ORAL, WRITTEN, EXPRESS, AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR PERFORMANCE OF SERVICES IN A GOOD AND WORKMANLIKE MANNER.

3.2 Written Reports and Findings. Unless otherwise agreed in writing, Consultant's findings, opinions, and recommendations will be provided to Client in writing and may be delivered via electronic format. Client agrees not to rely on oral findings, opinions, or recommendations.

3.3 Observation or Sampling Locations. Locations of field observations or sampling described in Consultant's report or shown on Consultant's sketches reference Project plans or information provided by others or estimates made by Consultant's personnel. Consultant will not survey, set, or check the accuracy of those points unless Consultant accepts that duty in writing. Client agrees that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. Client accepts the inherent risk that samples or observations may not be representative of items not sampled or seen and further that site conditions may vary over distance or change over time.

3.4 Project Site Information. Client will provide Consultant with prior environmental, geotechnical and other reports, specifications, plans, and information to which Client has access about the Project site and which are necessary for Consultant to carry out Consultant's Services. Client agrees to provide Consultant with all plans, changes in plans, and new information as to Project site conditions until Consultant has completed its Services.

3.5 Subsurface Objects. To the extent required to carry out Consultant's Services, Client agrees to provide Consultant, in a timely manner, with information that Client has regarding buried objects at the Project site. Consultant will not be responsible for locating buried objects or utilities at the Project site unless expressly set forth in this Agreement, or expressly required by applicable law. Client agrees to hold Consultant harmless, defend, and indemnify Consultant from claims, damages, losses, penalties and expenses (including attorney fees) involving buried objects or utilities that were not properly marked or identified or of which Client had or should have had knowledge but did not timely notify Consultant or correctly identify on the plans Client or others furnished to Consultant. Consultant, from time to time, may hire a third party to locate underground objects or utilities and, unless otherwise expressly stated in this Agreement, such action shall be for the sole benefit of Consultant and in no way will alleviate Client of its responsibilities hereunder.

3.6 Hazardous Materials. Client will notify Consultant of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any Project site or in any sample or material provided to Consultant. Client agrees to provide Consultant with information in Client's possession or control relating to such samples or materials. If Consultant observes or suspects the presence of contaminants not anticipated in this Agreement, Consultant may terminate Services without liability to Client or to others, and Client will compensate Consultant for fees earned and expenses incurred up to the time of termination.

3.7 Supervision of Others. Consultant shall have no obligation to supervise or direct Client's representatives, contractors, or other third parties retained by Client. Consultant has no authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Client, Client's representatives, contractors, or other third parties retained by Client.

3.8 Safety. Consultant will provide a health and safety program for its employees as well

as reasonable personal protective equipment ("PPE") typical for the performance of the Services provided by this Agreement and as required by law. Consultant shall be entitled to compensation for all extraordinary PPE required by Client. Client will provide, at no cost to Consultant, appropriate Project site safety measures which are necessary for Consultant to perform its Services at the Project location or work areas in connection with the Project. Consultant's employees are expressly authorized by Client to refuse to work under conditions that may, in an employee's sole discretion, be unsafe. Consultant shall have no authority over or be responsible for the safety precautions and programs, or for security, at the Project site (except with respect to Consultant's own Services and those of its subconsultants).

3.9 Project Site Access and Damage. Client will provide or ensure access to the site. In the performance of Services some Project site damage is normal even when due care is exercised. Consultant will use reasonable care to minimize damage to the Project site. Unless otherwise expressly stated in this Agreement, the cost of restoration for such damage has not been included in the estimated fees and will be the responsibility of the Client.

3.10 Monitoring Wells. To the extent applicable to the Services, monitoring wells are Client's property, and Client is responsible for monitoring well permitting, maintenance, and abandonment unless otherwise expressly set forth in this Agreement.

3.11 Contaminant Disclosures Required by Law. Client agrees to make all disclosures related to the discovery or release of contaminants that are required by law. In the event Client does not own the Project site, Client acknowledges that it is Client's duty to inform the owner of the Project site of the discovery or release of contaminants at the site. Client agrees to hold Consultant harmless, defend, and indemnify Consultant from claims, damages, penalties, or losses and expenses, including attorney fees, related to Client's failure to make any disclosure required by law or for failing to make the necessary disclosure to the owner of the Project site.

SECTION 4: SCHEDULE

4.1 Schedule. Consultant shall complete its obligations within a reasonable time and shall make decisions and carry out its responsibilities in a manner consistent with the Standard of Care. Specific periods of time for rendering Services or specific dates by which Services are to be completed are provided in this Agreement. If Consultant is delayed in the performance of the Services by actions, inactions, or neglect of Client or others for whom Client is responsible, by changes ordered in the Services, or by other causes beyond the control of Consultant, including force majeure events, then the time for Consultant's performance of Services shall be extended and Consultant shall receive payment for all expenses attributable to the delay in accordance with Consultant's then current rates and fees.

4.2 Scheduling On-Site Observations or Services. To the extent Consultant's Services require observations, inspections, or testing be performed at the Project site, Client understands and agrees that Client, directly or indirectly through its authorized representative, has the sole right and responsibility to determine and communicate to Consultant the scheduling of observations, inspections, and testing performed by Consultant. Accordingly, Client also acknowledges that Consultant bears no responsibility for damages that may result because Consultant did not perform such observations, inspections, or testing that Client failed to request and schedule. Client understands that the scheduling of observations, inspections, or testing will dictate the time Consultant's field personnel spend on the job site and agrees to pay for all services provided by Consultant due to Client's scheduling demands in accordance with Consultant's then current rates and fees.

SECTION 5: COST AND PAYMENT OF SERVICES

5.1 Cost Estimates. Consultant's price or fees provided for in this Agreement are an estimate and are not a fixed amount unless otherwise expressly stated in this Agreement. Consultant's estimated fees are based upon Consultant's experience, knowledge, and professional judgment as well as information available to Consultant at the time of this Agreement. Actual costs may vary and are not guaranteed or warranted.

5.2 Payment. Consultant will invoice Client on a monthly basis for Services performed. Client will pay for Services as stated in this Agreement together with costs for Additional Services or costs otherwise agreed to in writing within thirty (30) days of the invoice date. Unless otherwise stated in this Agreement or agreed to in writing, Consultant's costs for all services performed will be based upon Consultant's then current rates, fees, and charges. No retainage shall be withheld by Client. All unpaid invoices will incur an interest charge of 1.5% per month or the maximum allowed by law.

5.3 Other Payment Conditions. Consultant will require Client credit approval and Consultant may require payment of a retainer fee. Client agrees to pay all applicable taxes. Client's obligation to pay for Services under this Agreement is not contingent on Client's ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, Client's successful completion of any project, receipt of payment from a third party, or any other event.

5.4 Third Party Payment. Provided Consultant has agreed in writing, Client may request Consultant to invoice and receive payment from a third party for Consultant's Services. Consultant, in its sole discretion, may also require the third party to provide written acceptance of all terms of this Agreement. Neither payment to Consultant by a third party nor a third party's written acceptance of all terms of this Agreement will alter Client's rights and responsibilities under this Agreement. Client expressly agrees that

the Agreement contains sufficient consideration notwithstanding Consultant being paid by a third party.

5.5 Non-Payment. If Client does not pay for Services in full as agreed, Consultant may retain work not yet delivered to Client and Client agrees to return all Project Data (as defined in this Agreement) that may be in Client's possession or under Client's control. If Client fails to pay Consultant in accordance with this Agreement, such nonpayment shall be considered a default and breach of this Agreement for which Consultant may terminate for cause consistent with the terms of this Agreement and without liability to Client or to others. Client will compensate Consultant for fees earned and expenses incurred up to the time of termination. Client agrees to be liable to Consultant for all costs and expenses Consultant incurs in the collection of amounts invoiced but not paid, including but not limited to attorney fees and costs.

SECTION 6: OWNERSHIP AND USE OF DATA

6.1 Ownership. All reports, notes, calculations, documents, and all other data prepared by Consultant in the performance of the Services ("Project Data") are instruments of Consultant's Services and are the property of Consultant. Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto, of Project Data.

6.2 Use of Project Data. The Project Data of this Agreement is for the exclusive purpose disclosed by Client and, unless agreed to in writing, for the exclusive use of Client. Client may not use Project Data for a purpose for which the Project Data was not prepared without the express written consent of Consultant. Consultant will not be responsible for any claims, damages, or costs arising from the unauthorized use of any Project Data provided by Consultant under this Agreement. Client agrees to hold harmless, defend and indemnify Consultant from any and all claims, damages, losses, and expenses, including attorney fees, arising out of such unauthorized use.

6.3 Samples, Field Data, and Contaminated Equipment. Samples and field data remaining after tests are conducted, as well as field and laboratory equipment that cannot be adequately cleansed of contaminants, are and continue to be the property of Client. Samples may be discarded or returned to Client, at Consultant's discretion, unless within fifteen (15) days of the report date Client gives Consultant written direction to store or transfer the samples and materials. Samples and materials will be stored at Client's expense.

6.4 Data Provided by Client. Electronic data, reports, photographs, samples, and other materials provided by Client or others may be discarded or returned to Client, at Consultant's discretion, unless within 15 days of the report date Client gives Consultant written direction to store or transfer the materials at Client's expense.

SECTION 7: INSURANCE

7.1 Insurance. Consultant shall keep and maintain the following insurance coverages:

- a. Workers' Compensation: Statutory
- b. Employer's Liability: \$1,000,000 bodily injury, each accident | \$1,000,000 bodily injury by disease, each employee | \$1,000,000 bodily injury/disease, aggregate
- c. General Liability: \$1,000,000 per occurrence | \$2,000,000 aggregate
- d. Automobile Liability: \$1,000,000 combined single limit (bodily injury and property damage)
- e. Excess Umbrella Liability: \$5,000,000 per occurrence | \$5,000,000 aggregate
- f. Professional Liability: \$2,000,000 per claim | \$2,000,000 aggregate

7.2 Waiver of Subrogation. Client and Consultant waive all claims and rights of subrogation for losses arising out of causes of loss covered by the respective insurance policies.

7.3 Certificate of Insurance. Consultant shall furnish Client with a certificate of insurance upon request.

SECTION 8: INDEMNIFICATION, CONSEQUENTIAL DAMAGES, LIABILITY LIMITS

8.1 Indemnification. Consultant's only indemnification obligation shall be to indemnify and hold harmless the Client, its officers, directors, and employees from and against those damages and costs incurred by Client or that Client is legally obligated to pay as a result of third party tort claims, including for the death or bodily injury to any person or for the destruction or damage to any property, but only to the extent proven to be directly caused by the negligent act, error, or omission of the Consultant or anyone for whom the Consultant is legally responsible. This indemnification provision is subject to the Limitation of Liability set forth in this Section 8.

8.2 Intellectual Property. Client agrees to indemnify Consultant 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 Client or others on behalf of Client.

8.3 Mutual Waiver of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREUNDER, NEITHER CONSULTANT NOR CLIENT SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, OR LOSS OF USE OR RENTAL, LOSS OF PROFIT, LOSS OF BUSINESS OPPORTUNITY, LOSS OF PROFIT OR REVENUE OR COST OF FINANCING, OR OTHER SUCH SIMILAR AND RELATED DAMAGE ASSERTED IN THIRD PARTY CLAIMS, OR CLAIMS BY EITHER PARTY AGAINST THE OTHER.

8.4 Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY IN THE AGGREGATE OF CONSULTANT, CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, TO CLIENT AND ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT FOR ANY CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED

CONSULTANT'S PERFORMANCE OF THE SERVICES OR THIS AGREEMENT, FROM ANY CAUSE OR CAUSES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS AND OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, INDEMNIFICATION OBLIGATIONS OR BREACH OF WARRANTY, SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY CONSULTANT OR \$50,000, WHICHEVER IS GREATER.

SECTION 9: MISCELLANEOUS PROVISIONS

9.1 Services Prior to Agreement. Directing Consultant to commence Services prior to execution of this Agreement constitutes Client's acceptance of this unaltered Agreement in its entirety.

9.2 Confidentiality. To the extent Consultant receives Client information identified as confidential, Consultant will not disclose that information to third parties without Client consent. Additionally, any Project Data prepared in performance of the Services will remain confidential and Consultant will not release the reports to any third parties not involved in the Project. Neither of the aforesaid confidentiality obligations shall apply to any information in the public domain, information lawfully acquired from others on a nonconfidential basis, or information that Consultant is required by law to disclose.

9.3 Relationship of the Parties. Consultant will perform Services under this Agreement as an independent contractor, and its employees will at all times be under its sole discretion and control. No provision in this Agreement shall be deemed or construed to create a joint venture, partnership, agency or other such association between the Parties.

9.4 Resource Conservation and Recovery Act. To the extent applicable to the Services, neither this Agreement nor the providing of Services will operate to make Consultant an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation and Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous substances. Client agrees to hold Consultant harmless, defend, and indemnify Consultant from any claims, damages, penalties or losses resulting from the storage, removal, hauling or disposal of such substances.

9.5 Services in Connection with Legal Proceedings. Client agrees to compensate Consultant in accordance with its then current fees, rates, or charges if Consultant is asked or required to respond to legal process arising out of a proceeding related to the Project and as to which Consultant is not a party.

9.6 Assignment. This Agreement may not be assigned by Consultant or Client without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

9.7 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended, or will be construed, to confer upon or give any person or entity other than Consultant and Client, and their respective permitted successors and assigns, any rights, remedies, or obligations under or by reason of this Agreement.

9.8 Termination. This Agreement may be terminated by either Party for cause upon seven (7) days written notice to the other Party. Should the other Party fail to cure and perform in accordance with the terms of this Agreement within such seven-day period, the Agreement may terminate at the sole discretion of the Party that provided the written notice. The Client may terminate this Agreement for its convenience. If Client terminates for its convenience, then Consultant shall be compensated in accordance with the terms hereof for Services performed, reimbursable costs and expenses incurred prior to the termination, and reasonable costs incurred as a result of the termination.

9.9 Force Majeure. Neither Party shall be liable for damages or deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, including but not limited to acts of God, acts of civil or military authority, embargoes, pandemics, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, strikes or lock-outs, declared states of emergency, and changes in laws, statutes, regulations, or ordinances.

9.10 Disputes, Choice of Law, Venue. In the event of a dispute and prior to exercising rights at law or under this Agreement, Consultant and Client agree to negotiate all disputes in good faith for a period of 30 days from the date of notice of such dispute. This Agreement will be governed by the laws and regulations of the state in which the Project is located and all disputes and claims shall be heard in the state or federal courts for that state. Client and Consultant each waive trial by jury.

9.11 Individual Liability. No officer or employee of Consultant, acting within the scope of employment, shall have individual liability for any acts or omissions, and Client agrees not to make a claim against any individual officers or employees of Consultant.

9.12 Severability. Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

9.13 Waiver. The failure of either Party hereto to exercise or enforce any right under this Agreement shall not constitute a release or waiver of the subsequent exercise or enforcement of such right.

9.14 Entire Agreement. The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provision of Services by Consultant to Client. This Agreement may be amended only by a written instrument signed by both Parties. In the event Client issues a purchase order or other documentation to authorize Consultant's Services, any conflicting or additional terms of such documentation are expressly excluded from this Agreement.