



ECS Southwest, LLP

ESTIMATED COST PROPOSAL FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

HUTCHINS CITY HALL

400 North JJ Lemon Road
Hutchins, Texas 75141

ECS Proposal Number **19:14654-CP**

ECS Southwest, LLP
3033 Kellway Drive, Suite 110
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P: 972-392-3222

05/30/2024

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05/30/2024

Mamun Yusuf
City of Hutchins – Public Works
321 North Main Street
Hutchins, Texas 75141

ECS Proposal No. 19: 14654-CP

Reference: **Proposal for Construction Materials Engineering and Testing Services
Hutchins City Hall
Hutchins, Texas 75141**

We are pleased to submit our unit fee proposal for **Construction Materials Engineering and Testing (CMT) Services** for this project. Based upon our extensive experience with local construction means and methods, quality assurance, quality control, and building construction in multiple markets in Texas, we can offer an unparalleled combination of service and value to your project. We have been providing CMT services along with geotechnical engineering and environmental services in the Dallas / Fort Worth metroplex since 2000.

Our staff of professional engineers and certified technicians will provide responsive and professional services to your project team. In addition, our paperless field reporting system will transmit to you and the project team our Project Principal reviewed testing and inspection reports within **24 to 48 hours** of when our actual observation / testing services are performed.

Our local North Texas operation benefits from having nationally accredited in-house geotechnical and construction materials testing laboratories. Our concrete laboratory performs compressive strength testing of concrete and masonry materials. Our soils laboratory performs soil tests including Proctors (moisture/density relationship) tests, Classifications, and California Bearing Ratios among others.

If you have any questions or comments regarding our proposal, please do not hesitate to contact us. ***We thank you for the opportunity to submit our proposal and look forward to the possibility of helping you on this project.***

Respectfully,
ECS Southwest, LLP

Raza Hussain Mir
Project Manager
NAME@ECSLimited.com

Vincent J. Elizarde, P.E.
Principal Engineer
VELizarde@ECSLimited.com

PROJECT INFORMATION / OVERVIEW

The request for bid provided by the client identifies the proposed development will consist of the construction of the following generalized structures and site features:

- One City Hall Building (~23,500 square feet)
- Site Pavement: Fire Lanes, Dumpster, Transformer, and Generator Enclosures, including Parking
- Site Features: Misc. Flatwork and Sidewalks (outside building)

SCOPE OF SERVICES

Our construction materials engineering and testing services scope is limited to our providing periodic or continuous testing and/or observations for the construction of the above-noted structures and features of this project. We anticipate that the project general contractor or their designated representative will be scheduling our services on an on-call, as-needed basis. Our general assumptions utilized in the preparation of this proposal are provided in a later section.

Unless otherwise directed by the client, items such as *service cancellations while our staff is in transit to the project site or once at the project site, onsite delays and standby time, and failed tests* are not factored into our scope and estimated fees provided with this proposal.

We agree to provide an engineering technician(s) or an engineer, as scheduled (see above), to perform our construction materials observation, sampling, and testing services as noted in the following sections. *To most effectively service the client and facilitate the construction process and schedule, we request that our services be scheduled a minimum 24-hours in advance.* We anticipate the following services for this project:

Earthwork

An Engineering Technician will perform the following services pertaining to earthwork:

1. Obtain (pick up) soil samples and perform laboratory soil tests generally including moisture/density relationship (Standard Proctor) tests, soil classification tests (Atterberg Limits and percent finer than the no. 200 sieve) for each requested soil-type. Additional soil testing may be required depending on project-specific requirements.
2. Observe proof-rolling of prepared subgrade areas.
3. Observe placement and compaction of backfill materials (as scheduled)
4. Perform in-place moisture/density tests on placed and compacted soils and prepared subgrades.
5. Perform lime gradations and lime depth measurements for lime-treated subgrades.
6. As-requested, periodically observe excavation operations to document removal of unsuitable materials including but not limited to deleterious materials, trash, debris, frozen soil, or stones.

Reinforcing Steel & Cast-In-Place Concrete Structures

An Engineering Technician will perform the following services pertaining to reinforcing steel and concrete:

1. Observe reinforcing steel layout for size, spacing, cleanliness, length, splices, and positioning.
2. Observe concrete placement, contractor procedures, and limited initial curing.
3. Perform concrete field tests and associated measurements including: slump, air content, unit weight, and ambient air & concrete temperature. Sample placed concrete materials.
4. Pick up concrete sample cylinders the following work-day and transport them to the ECS concrete laboratory for processing, moisture curing, and subsequent compressive strength testing. *Appropriate onsite storage areas (curing boxes, shades, etc) for initial sample curing and any other field curing of concrete samples shall be provided by the contractor.*

Foundations

A Senior Engineering Technician will perform the following services pertaining to foundations:

1. Observe foundation excavation including prepared subgrade surfaces (shallow foundations, footings, etc) and bearing strata, penetration depth, and end bearing surface (deep foundations, piers, etc).
2. Observe the reinforcing steel layout and concrete placement (see “Reinforcing Steel & Cast-In-Place Concrete Structures” section).

Structural Masonry

A Senior Engineering Technician will perform the following services pertaining to structural masonry:

1. Observe reinforcing steel layout for size, spacing, cleanliness, length, splices, and positioning. Observe cells.
2. Perform masonry field tests and associated measurements (as applicable) including: slump, ambient air & material temperature.
3. Sample placed masonry materials (grout and mortar).
4. Pick up masonry samples the following work-day and transport them to the ECS materials laboratory for processing, moisture curing, and subsequent sample preparation and compressive strength testing.

Structural Steel

A Structural Steel Technician will perform the following services pertaining to structural steel:

1. Observe general structural steel erection and assembly.
2. Observe completed welds and connections.

Project Administration, Clerical, & Dispatching

Project Administrators / Clerical Staff will work on the projects as follows:

1. Perform Field Services Dispatching.
2. Process Field Reports and Laboratory Test Result Reports.
3. Perform additional administrative and clerical duties to aid in project execution.

Project Management

Project Managers and Principal Engineers will manage the project as follows:

1. Attend the Pre-Construction meeting (if held).
2. Coordinate field and lab services with the project general contractor and dispatch our field staff as scheduled.
3. Process, finalize, and distribute all field and laboratory reports.
4. Manage our project operation and services delivery as well as provide general material engineering consultation.

Our field staff or project professionals will provide documentation of events in the field and notify the project general contractor and the client (as needed) upon recognition of deficiencies.

ADDITIONAL SERVICES

The following services are not included in the Scope of Services and will be considered as *Additional Services*, if and when they are required, requested, or occur:

1. Construction materials observation, sampling, or testing for non-structural components.
2. Additional construction material samples for laboratory testing including early test samples or additional sample sets beyond the frequency required in the project documents.
3. Services cancellation in transit or at the project site, including all associated staff time and vehicle charges.
4. Onsite delays and standby time.
5. Failed Tests, including all associated time, materials, and vehicle charges.
6. Field (on site) curing facilities and/or storage for the cementitious samples.
7. Attendance at construction meetings throughout the duration of the construction process.
8. Any additional services not specifically included in the above Scope of Services for this project.

The additional services noted above are not factored into our scope and estimated fees provided with this proposal. Unless defined specifically, all additional services will be invoiced at their standard rates (subject to overtime modification, where applicable) shown on the following fee schedule.

ESTIMATED FEES

Based on the general scope of work indicated above and our take-off quantities, presumed construction procedures, phasing, and schedule, we anticipate our construction materials engineering and testing fees as shown on the following "Estimated Fees & Total Cost" table.

The number of hours and level of effort that we based our proposal on should be considered approximate since it is not based upon a published construction schedule or provided material quantities. In addition, our actual number of hours and tests for this project will ultimately be determined by as-constructed magnitudes and frequencies of installation events as well as the proportion of concurrent events requiring our CMT services. If a construction schedule or material quantities become available, we can review them against our assumptions and be more definitive in our scope and estimated costs.

The rates applied to this project and utilized in our fee estimation are provided on the following "Standard Fee Schedule" table. Additions or deletions to our scope of work (estimated quantities) will be adjusted based on the established unit prices provided in this proposal for this project.

GENERAL ASSUMPTIONS

Based on the general project information and our scope of services outlined above, the general assumptions utilized in the preparation of our estimated fees are listed below:

1. All material sample pickups and transport to our Laboratory are separate trips, independent of scheduled services.
2. All reinforcing steel observation (as scheduled) will be performed on the same trip as the respective concrete placement event, immediately prior to concrete placement.
3. Concrete will generally be placed at 200 cubic yards per event (pour) where applicable. 300 cubic yards per pavement concrete placement event.
4. Utility trench excavation backfilling will be completed at a rate of 300 linear feet / day.
5. Building Pad Subgrade Moisture Conditioning will be completed within 10 feet at a rate of 1,000 cubic yards / day.

ESTIMATED FEES & TOTAL COST

Description of Services	Notes	Quantity	Unit	Rate	Total
Earthwork					
LAB: Moist./Dens. Relationship (St. Proctor)		4	each	\$ 155.00	\$ 620.00
LAB: Atterberg Limits (Plasticity Index)		4	each	\$ 85.00	\$ 340.00
LAB: Washed Sieve Analysis (Pass No. 200)		4	each	\$ 50.00	\$ 200.00
Engineering Technician	80 Events	640	hours	\$ 62.00	\$ 39,680.00
Engineering Technician (OT)		40	hours	\$ 93.00	\$ 3,720.00
Nuclear Gauge Fee		80	events	\$ 55.00	\$ 4,400.00
Vehicle Charge		82	trips	\$ 70.00	\$ 5,740.00
				Subtotal:	\$ 54,700.00
Reinforcing Steel & Cast-In-Place Concrete					
Engineering Technician	40 Events	200	hours	\$ 62.00	\$ 12,400.00
Concrete: Cylinders – Compressive Strength	80 Sets of 5	400	each	\$ 16.00	\$ 6,400.00
Sample Pickup Technician		40	trips	\$ 50.00	\$ 2,000.00
Vehicle Charge		80	trips	\$ 70.00	\$ 5,600.00
				Subtotal:	\$ 26,400.00
Foundations - Piers					
Senior Engineering Technician	20 Events	160	hours	\$ 70.00	\$ 11,200.00
Senior Engineering Technician (OT)		40	hours	\$ 105.00	\$ 4,200.00
Concrete: Cylinders – Compressive Strength	20 Sets of 5	100	each	\$ 16.00	\$ 1,600.00
Sample Pickup Technician		20	trips	\$ 50.00	\$ 1,000.00
Vehicle Charge		40	trips	\$ 70.00	\$ 2,800.00
				Subtotal:	\$ 20,800.00
Structural Steel					
Structural Steel Technician	20 Events	100	hours	\$ 85.00	\$ 8,500.00
Vehicle Charge		20	trips	\$ 70.00	\$ 1,400.00
				Subtotal:	\$ 9,900.00
Structural Masonry					
Senior Engineering Technician	20 Events	80	hours	\$ 70.00	\$ 5,600.00
Grout: Prisms - Compressive Strength	20 Sets of 3	60	each	\$ 20.00	\$ 1,200.00
Mortar: Cubes - Compressive Strength	20 Sets of 3	60	each	\$ 18.00	\$ 1,080.00
Sample Pickup Technician		20	trips	\$ 50.00	\$ 1,000.00
Vehicle Charge		40	trips	\$ 70.00	\$ 2,800.00
				Subtotal:	\$ 11,680.00
Project Management					
Project Initiation / Startup		1	each	\$ 250.00	\$ 250.00
Administrator / Clerical / Dispatch		18	hours	\$ 50.00	\$ 900.00
Project Manager		90	hours	\$ 150.00	\$ 13,500.00
Project Principal		45	hours	\$ 220.00	\$ 9,900.00
Vehicle Charge		2	trips	\$ 70.00	\$ 140.00
				Subtotal:	\$ 24,690.00
TOTAL ESTIMATED COST:					\$ 148,170.00



STANDARD FEE SCHEDULE

Description of Services	Notes	Unit Rate
Field Services		
• Engineering Technician		\$ 62.00 / hour
• Senior Engineering Technician		\$ 70.00 / hour
• Structural Steel Technician		\$ 85.00 / hour
• Specialty Technician		\$ 80.00 / hour
• Nuclear Gauge Fee		\$ 55.00 / day
• Concrete Core Drilling – Mobilization		\$ 250.00 / each
• Concrete Core Drilling – Crew		\$ 150.00 / hour
• Sample Pickup		\$ 50.00 / trip
• Vehicle Charge		\$ 70.00 / trip
Project Management & Engineering Services		
• Project Initiation / Startup		\$ 200.00 / each
• Administrator / Clerical / Dispatch		\$ 50.00 / hour
• Project Manager		\$ 150.00 / hour
• Project Principal		\$ 220.00 / hour
• Concrete Mix Design Review		\$ 275.00 / each
• Certification Letter		\$ 250.00 / each
Laboratory Services		
• Earthwork: Standard Proctor, Moisture / Density Relationship	ASTM D-698	\$ 155.00 / each
• Earthwork: Modified Proctor, Moisture / Density Relationship	ASTM D-1557	\$ 155.00 / each
• Earthwork: Atterberg Limits Tests, Plasticity Index	ASTM D-4318	\$ 85.00 / each
• Earthwork: Washed Sieve Analyses, Percent Passing #200 Sieve	ASTM D-1440	\$ 50.00 / each
• Earthwork: Lime Series	ASTM D-6276	\$ 180.00 / each
• Earthwork: Lime Gradations	ASTM D-6913	\$ 15.00 / each
• Earthwork: Free-Swell Test	ASTM D-4546	\$ 110.00 / each
• Concrete: Cylinders – Compressive Strength	ASTM C-39	\$ 16.00 / each
• Grout: Prisms - Compressive Strength	ASTM C-1019	\$ 20.00 / each
• Mortar: Cubes - Compressive Strength	ASTM C-270	\$ 18.00 / each
• Masonry: Masonry Block Prism – Compressive Strength	ASTM C-1314	\$ 300.00 / each

General Notes

1. There will be **no minimum charge** for services rendered on this project; billing will be based on specific unit rates reflecting only the actual time spent and tests performed on this project.
2. Hourly unit rates are based on a normal 8-hour workday, 40 hours per week, Monday through Friday (non-holidays), between normal business hours of 8:00 a.m. to 5:00 p.m. Hourly rates outside normal, and on Saturday, Sunday, and Holidays, will be invoiced at a rate of 1.5 times the normal hourly rate indicated above.
3. Vehicle charges account for a round trip originating from our local office to the project site.

APPENDICES

REPORTING
BILLING
PROPOSAL ACCEPTANCE
COMPANY OVERVIEW
TERMS AND CONDITIONS

REPORTING

Daily field reports and laboratory test reports will be distributed via electronic mail (email) as part of our service to the distribution list determined by the client for this project. We will not distribute reports to any parties without permission from the client. ***Our reporting systems are fully computerized, we are able to submit both field and laboratory results within 24-48 hours of when our actual observation / testing services are performed.*** Report distribution by facsimile can be performed if specifically requested.

Where deficiencies in procedures or materials are recognized in the field or the laboratory, the general contractor will be notified as soon as possible. Electronic copies of reports can be forwarded via email to additional parties designated by the client, at no extra charge, as part of our service.

BILLING

Invoices will be issued on a monthly basis and will provide a week by week breakdown of billing units, unless modified by request of the client. Our invoices are normally processed on or around the 10th of each month and represent costs incurred during the previous calendar month. These invoices will also display a monthly cumulative summary of project costs to date. This monthly summary will serve as a means of monitoring job expenses as they relate to job progress. We request that payment be rendered within 30 days of receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days. ECS also reserves the right to withhold final certifications until outstanding balances have been paid in full.

All services provided for this project will be billed in accordance with the unit rate schedule. It is our belief that all required services have been included in our unit price list. Should supplemental services be deemed necessary at a later date, they would be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance. All unit prices listed herein shall remain as stated throughout the project.

Unless otherwise directed by the client, items such as *service cancellations while our staff is in transit to the project site or once at the project site, onsite delays and standby time, and failed tests* are not factored into our scope and estimated fees provided with this proposal. Technician and project management time and vehicle charges as well as each failed test will be invoiced as additional (out of scope) services. Additional services noted are not factored into our scope and estimated fees provided with this proposal and will be invoiced as separate (out of scope) services. Unless defined specifically, all additional services will be invoiced at their standard rates (subject to overtime, where applicable) shown on the schedule of fees for this proposal.

PROPOSAL ACCEPTANCE

Attached to this letter, and an integral part of our proposal, are our "Terms and Conditions of Service". These conditions represent the current recommendations of the Geoprofessional Business Association, the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive a signed proposal acceptance form (following page) prior to initiation of work and release of any work product. This letter is the agreement for our services and your authorization for ECS to proceed with our defined scope of services. Your acceptance of this proposal is indicated by signing and returning the enclosed "Proposal Acceptance Form" to us.

We are pleased to have the opportunity to offer our services and look forward to working with you on this project.

PROPOSAL ACCEPTANCE FORM

ECS Proposal No.: 19:14654-CP
 ECS Proposal Date: 05/30/2024
 Project Name: Hutchins City Hall – Hutchins, Texas
 Scope of Work: Construction Materials Engineering & Testing Services
 Total Estimated Cost: **\$ 148,170.00**

Client Signature: _____ Date: _____

Please complete this page and return one copy of this proposal to ECS to indicate acceptance of this proposal and to initiate work on the above-referenced project. The Client’s signature above also indicates that he/she has read or has had the opportunity to read the accompanying Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service.

BILLING INFORMATION
 (Please Print or Type)

Name of Client: _____
 Name of Contact Person: _____
 Telephone No. of Contact Person: _____
 Party Responsible for Payment: _____
 Company Name: _____
 Person/Title: _____
 Department: _____
 Billing Address: _____
 Email Address: _____
 Telephone Number: _____
 Client Project/Account Number: _____
 Special Conditions for Invoice: _____
 Submittal and Approval: _____

ECS offers a full array of services to assist you with *all* phases of your project, including but not limited to:

<input type="checkbox"/> Phase I, II and III Environmental Site Assessments	<input type="checkbox"/> Third Party Mechanical, Electrical, Plumbing Inspections Services	<input type="checkbox"/> Building Envelope, Roofing, and Waterproofing Inspection and Consultation
<input type="checkbox"/> Archaeological Assessments	<input type="checkbox"/> Geotechnical Engineering Services	<input type="checkbox"/> Pre- and Post-Construction Condition Assessments
<input type="checkbox"/> Wetlands Delineations	<input type="checkbox"/> Construction Materials Testing	<input type="checkbox"/> Specialty Materials and Forensics Testing
<input type="checkbox"/> Asbestos/Lead Paint Services	<input type="checkbox"/> Septic/Drainfield Design Services	
<input type="checkbox"/> Indoor Air Quality Mold Services	<input type="checkbox"/> LEED® Consulting Services	

Please indicate any of the services you are interested in and a member of the ECS team will contact you to discuss how we can be of service to your project.



COMPANY BACKGROUND AND HISTORY

ECS is a diverse consulting firm specializing in Geotechnical Engineering, Construction Materials Engineering and Testing, Environmental Services, and Facilities Engineering. Our firm was founded in 1987 and employs a staff of nearly 1,500 people including registered professional engineers and geologists, certified laboratory technicians and construction inspectors, field engineers, computer specialists, and support personnel. ECS operates 50 offices and continues to grow in the Midwest, Southwest, and Eastern states. Our firm is ranked on the Engineer News Record (ENR) Top 5 Geotechnical firms and top 100 pure design firms.

ECS Southwest, LLP, our local subsidiary operation with 6 offices throughout Texas and Oklahoma, offers a wide range of consulting services. Our services are divided into four major function groups described below:

Geotechnical Engineering Group performs subsurface explorations with emphasis on foundation systems for buildings of all types, drainage system designs and other ground water solutions, retaining structures, problem soil sites, slope stability evaluations, and deep foundation designs. Understanding that most cost overruns occur during construction, this is our best opportunity to provide value as well as up-front quality control.

Construction Materials Engineering and Testing Group provides full-scale testing and inspection services on numerous projects with scopes of work reflecting our ability to follow projects from earthwork phases through roofing construction, including:



Illume Park – Dallas, TX

- Full Service Construction Inspection
- Excavation Monitoring
- Foundation Installation, Observation & Testing
- Field & Laboratory Testing of Concrete, Steel, Masonry, Soil, and Fireproofing
- Floor Flatness Surveys
- Non-Destructive Concrete & Steel Testing
- Concrete Core Drilling & Testing

Environmental Services Group performs Phase I and Phase II Environmental Site Assessments, Site Characterization Studies, Risk Assessments and Remediation Assessment and Design, Wetlands Studies and Delineations, Wetlands Mitigation, and Asbestos and Lead Based Paint Surveys. The Environmental Services group oversees remedial activity to insure compliance with federal, state, and local regulations and guidelines as well as site specific environmental management plans.

Facilities Engineering Group performs property condition assessments, pre-construction and post construction condition surveys, building investigations, garage rehabilitation schemes, asphalt and concrete pavement evaluations, water infiltration evaluations, asbestos and lead-based paint consulting, materials testing and evaluation, non-destructive and selective destructive evaluation of structures, full-scale load testing, and general investigative engineering services associated with the built environment.

Our ECS Service Groups function as a team to deliver on multi-faceted projects thereby providing our clients a single consultant through the life of the project. Our commitment to client responsiveness and a combination of our technical excellence and practical experience has us able to deliver high quality deliverables in an expeditious fashion thereby facilitating the design and construction schedules.

VALUE ENGINEERING

An important part of the consulting engineer's role on a project team is value engineering. At ECS, we constantly strive to provide the most economical design without sacrificing quality or compromising safety. Each project and location presents different challenges and the opportunity for different solutions. ECS provides value engineering within all our major service groups. Brief examples include:

- Increasing bearing capacity to reduce the size and cost of foundation systems.
- Changing deep foundation systems (such as caissons or piles) to conventional shallow spread footing systems.
- Appropriately applying Modified and Standard Proctor values to the earthwork process, especially during mass-grading. This allows the contractor to achieve sufficient results with less time and effort, and ultimately reduces the cost of the work without changing the engineering properties.
- Utilizing technological advances in geosynthetics to provide economical solutions to stabilize subgrades during mass grading for slabs and pavements.
- Recommending the use of segmental block retaining walls instead of conventional concrete retaining walls to reduce costs.
- Accurately analyzing slab or pavement subgrades to reduce over design.
- Utilizing technologically advanced and more cost effective methods of the treatment of contaminated soils and ground water.
- Providing expeditious transmission of field observation and testing documentation during construction to reduce the magnitude of corrections or change orders.

ECS is often asked to review and revise recommendations performed by other firms. This is done by fully utilizing the engineering properties of the subsurface conditions. ECS thoroughly understands the capabilities of the subsurface conditions having performed extensive field and laboratory testing on the major soil and rock types within our local North Texas geologic area. In many cases ECS' fee is "paid for" by providing more project-pertinent and site-specific recommendations that result in overall time and cost savings for the project.



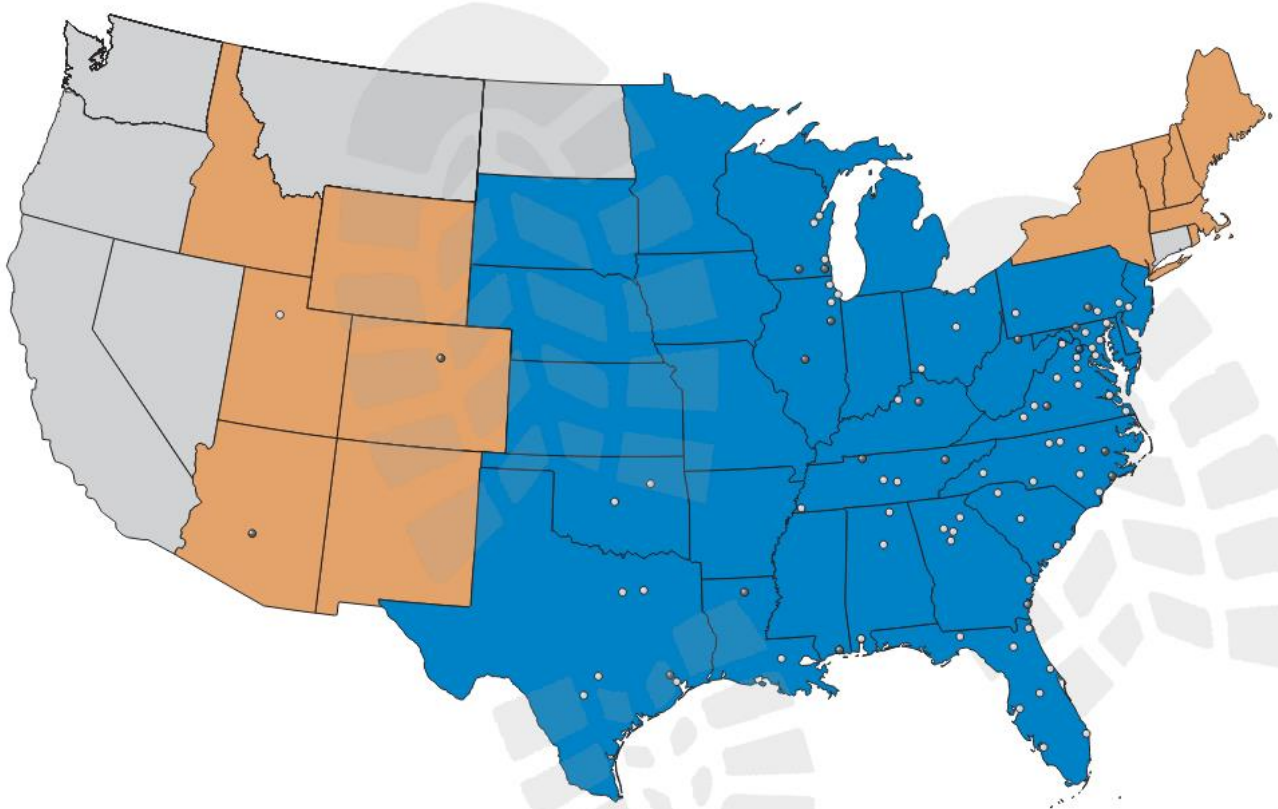
One Uptown – Dallas, TX



The Jordan Apartments – Dallas, TX

WHEREVER YOUR PROJECT TAKES YOU, ECS HAS...

BOOTS ON THE GROUND.



SERVICES KEY

- Environmental & Facilities
- Geotechnical, Environmental, Materials Testing & Facilities
- Geotechnical, Environmental & Facilities

OFFICES KEY

- Full Service Office
- Testing Services Only
- Corporate Headquarters

Materials Testing Service Area is approximately a 75-mile radius around each office.



CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

ECS approaches providing materials engineering and testing services based on the requirements set forth by the local jurisdictions and project specifications. In addition, ECS has served on numerous projects requiring Special Inspections and we are thoroughly familiar with the International Building Code (IBC) inspection requirements. Our staff have served as Special Inspections Engineer of Record on hundreds of projects in areas of the country where IBC has been implemented.

Services

Our CMT services include all those common to the Texas and Oklahoma region including observation, sampling, testing, and engineering for: earthwork, foundation installation, reinforcing steel, cast-in-place concrete, structural masonry, post-tensioned concrete, structural steel, fireproofing, etc. In addition, ECS has local capabilities to perform specialty testing including ultrasound, infrared, ground penetrating radar, magnetic particle, concrete / asphalt coring capabilities, and floor flatness surveys.

Technician Certifications

In order to meet the project requirements for CMT services, ECS has developed in house training programs that produce certified technicians at all levels. Our proposed technicians all hold related certifications. In addition, we have access to certified technicians through our other regional offices. Common technician certifications include:

- International Code Council (ICC)
- American Concrete Institute (ACI)
- Washington Area Council of Engineering Laboratories, Inc (WACEL)
- American Welding Society Certified Welding Inspector (AWS)
- Floor Flatness (in-house certification)
- Exterior Insulation and Finish Systems (EIFS)



Laboratory Qualifications

ECS operates engineering laboratories at most of its locations. Our concrete laboratory handles all testing for compression testing of concrete, masonry, and cores. The soil laboratory provides testing of soil including Proctor tests, classifications, and CBR among others. Accreditations and inspections currently held by ECS Labs include:



- U.S. Army Corps of Engineers (USACE)
- Washington Area Council of Engineering Laboratories (WACEL)
- AASHTO Material Reference Laboratory (AMRL) - Proficiency Sampling
- National Institutes of Science & Technology (NIST)
- National Ready Mix Concrete Association (NRMCA) - Proficiency Testing

Delivery

ECS proposes to assign technicians qualified for the required services. A Project Manager based in the Carrollton, TX office will supervise our field and laboratory staff, attend meetings and correspond with the project team, review field and laboratory reports, provide engineering consulting as necessary and to prepare final certifications. In addition, a Principal Engineer of ECS will be assigned to the project to provide additional technical review and support. All technical reports will be submitted with signatures of both the Project Manager and Principal Engineer.



TERMS AND CONDITIONS OF SERVICE

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

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

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

study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

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

12.0 SAFETY

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

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

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

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

15.0 BILLINGS AND PAYMENTS

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

16.0 DEFECTS IN SERVICE

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

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

18.0 LIMITATION OF LIABILITY

- 18.1 CLIENT agrees to allocate certain risks associated with the Project by limiting ECS' total liability to CLIENT arising from ECS' professional liability, i.e. professional acts, errors, or omissions and for any and all causes including negligence, strict liability, breach of contract, or breach of warranty, injuries, damages, claims, losses, expenses, or claim expenses (including reasonable attorney's fees) relating to professional services provided under this agreement to the fullest extent permitted by law. The allocation is as follows.
 - 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
 - 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$40,000, 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 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 negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. If CLIENT is a homeowner, homeowners' association, condominium owner, condominium owner's association, or similar residential owner, ECS recommends that client retain legal counsel before entering into this AGREEMENT to explain CLIENT'S rights and obligations hereunder, and the limitations, and restrictions imposed by this AGREEMENT. CLIENT agrees that failure of CLIENT to retain such counsel shall be a knowing waiver of legal counsel and shall not be allowed on grounds of avoiding any provision of this AGREEMENT.
- 19.4 If CLIENT is a residential builder or residential developer, CLIENT shall indemnify and hold harmless ECS against any and all claims or demands due to injury or loss initiated by one or more homeowners, unit-owners, or their homeowner's association, cooperative board, or similar governing entity against CLIENT which results in ECS being brought into the dispute.
- 19.5 In no event shall the duty to indemnify and hold another party harmless under this Section 19.0 include the duty to defend.
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 22.0 THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.
- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.
- 24.0 CURING A BREACH**
- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 25.0 TERMINATION**
- 25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.
- 27.0 ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.
- 30.0 TITLES; ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.

END OF TERMS AND CONDITIONS OF SERVICE