



ECS Southwest, LLP

Proposal for: **Building Envelope Consulting & Testing**

Prepared for: **City of Hutchins**

Hutchins Recreation Center and Library
401 N JJ Lemmon Rd, Hutchins, Texas 75141

ECS Proposal Number 50:1851

June 17, 2026





ECS Southwest, LLP

Geotechnical • Construction Materials • Environmental • Building Science + Infrastructure

June 17, 2026

Mr. Blake Moore
Chief Building Official
City of Hutchins
PO Box 500
Hutchins, Texas 75141

ECS Proposal No. 50:1851

Reference: Proposal for Building Envelope Consulting & Testing
Hutchins Recreation Center and Library
401 N JJ Lemmon Rd, Hutchins, Texas 75141

Dear Mr. Moore,

ECS Southwest, LLP (ECS) is pleased to provide our estimated cost proposal for providing Building Envelope Consulting & Testing for the Hutchins Recreation Center and Library project located at 401 N JJ Lemmon Rd, Hutchins, Texas. The services offered are to evaluate the building envelope installation and document compliance with the construction documents.

Based on the information available, a project description is noted in Section 1.1. The proposed scope of services for this project is outlined in Section 2.0 and estimated fees in Section 3.0.

We appreciate the opportunity to be of service to you on this important project. If you have any questions or comments concerning this proposal, or would like adjustments to our proposed scope of services or schedule, please do not hesitate to contact us at 972-392-3222 or cguichard@ecslimited.com.

Respectfully,

ECS Southwest, LLP

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ECS New York Engineering, PLLC - An Associate of ECS Group of Companies • ecslimited.com

"ONE FIRM. ONE MISSION."

1.0 PROJECT INFORMATION

1.1 Project Overview

We understand the project consists of the new construction of 1 one-story recreation building. The exterior cladding will consist primarily of concrete masonry unit and metal. The roof will consist of single-ply sheet membrane roofing assemblies. The fenestration systems will consist of aluminum frame double pane and glass curtain wall windows. The scope of services provided herein is intended to provide quality assurance observations and testing during certain building enclosure phases of the construction, as requested.

The anticipated scope of services for this project is outlined in Section 2.0 of this proposal.

The Client should carefully review our estimates and anticipated number of visits for each scope and determine if this is adequate to satisfy the client's requested or desired level of ECS' involvement, risk tolerance, and value provided to the project.

1.2 Documents Provided

ECS was provided with the Issue For Construction drawings and specifications, produced by Brandstetter Carroll Inc, dated March 23, 2026 for our review to assist with producing this proposal.

2.0 SCOPE OF SERVICES

2.1 Construction Phase - Consulting, Testing, and Quality Assurance

During construction, observation of the work will be performed shortly after work has started and on a periodic basis to ascertain compliance with the Contract Documents and industry standards as scheduled at the request of the contractor. Specific items, in addition to the overall work and items reviewed at the pre-installation meetings, that will typically be observed for the different assemblies are described below. Testing will be performed as coordinated and scheduled by the contractor per the specifications and client requests. Daily reports will typically identify and define certain installation conditions and procedures and compliance with the contract documents. The contractor(s) will be notified of observed deficiencies and deviations from the contract documents, and these items will be tracked in our project non-compliance log that will be included with our daily reports. Photographic documentation of observed conditions will also be provided.

2.1.1 Building Envelope Contract Document and Submittals Review

The pertinent Contract documents (plans, specifications, reports, etc.) and Sub-Contractors' approved project shop drawings, submittals, RFI's and other Contract Document requirements pertaining to the subject building envelope assemblies will be reviewed by ECS project staff to evaluate observations and testing performed by ECS for compliance with the specification and the architectural drawings. This effort requires a familiarization review at the project onset, and continuous review of documents throughout the project to evaluate the construction compliance with the contract documents. ECS has provided a Project Management budget allowance to account for these efforts throughout the project.

2.1.2 Preconstruction Meetings

ECS will attend and participate in specified preconstruction meetings for each building envelope scope included in ECS' services noted below, as requested.

2.1.3 Mock-up Review

- ECS will review mockup construction to verify that it meets the specified component/size/location/extent parameters to establish the functional intent specified.
- ECS will verify that the installation follows the manufacturer requirements of the individual building envelope systems, as well as review the interfaces of separate systems for issues of compatibility and constructability.

2.1.4 07 11 13 - Bituminous Dampproofing

- Storage conditions of moisture, temperature, and UV-sensitive materials
- Condition and preparation of the substrate prior to and during the waterproofing work
- Application of surface conditioner or primer materials
- Installation of the waterproofing membrane
- Installation of penetration flashings and terminations
- Installation of drainage composite and/or protection layer

- Installation of waterproofing associated accessories
- Condition of the waterproofing prior to backfill placement

2.1.5 07 13 00 - Sheet Waterproofing

- Storage conditions of moisture, temperature, and UV-sensitive materials
- Condition and preparation of the substrate prior to and during the waterproofing work
- Application of surface conditioner or primer materials
- Installation of the waterproofing membrane
- Installation of penetration flashings, terminations, and waterstops
- Installation of drainage composite and/or protection layer
- Installation of waterproofing associated accessories
- Condition of the waterproofing prior to backfill placement

2.1.6 07 27 26 - Fluid-Applied Air/Water-Resistive Barrier

- Continuity of air-barrier system
- Continuous structural support of air-barrier system
- Masonry and concrete surfaces are smooth, clean, and free of cavities, protrusions, and mortar droppings.
- Site conditions for application temperature and dryness of substrates
- Maximum exposure time of materials to UV deterioration has not been exceeded
- Surfaces primed, if applicable
- Laps in strips and transition strips have complied with minimum requirements and have been shingled in the correct direction (or mastic has been applied on exposed edges), with no fishmouths
- Termination mastic has been applied on cut edges
- Reinforcing and transition strips have been firmly adhered to substrate
- Compatible materials have been used
- Transitions at changes in direction and structural support at gaps have been provided
- Connections between assemblies (air-barrier and sealants) have complied with requirements for cleanliness, surface preparation and priming, structural support, integrity, and continuity of seal
- Penetrations have been sealed

Field Testing: ECS will witness or perform the following specified testing method(s):

- Air Leakage Testing: Air-barrier assemblies tested for evidence of air leakage according to ASTM E1186, chamber pressurization or depressurization in conjunction with smoke pencil.

2.1.7 07 54 23 - Thermoplastic Polyolefin (TPO) Roofing

- Storage conditions of moisture-, temperature-, or UV-sensitive materials
- Condition and preparation of the substrate prior to, and during, the roofing work
- Installation of the insulation and roof covering, to include timing, board layout and staggering, fastening, temperatures, and appropriate use of materials and products which may jeopardize the long-term water tightness of the roof covering

- Installation of penetration flashings and terminations
- Installation of metalwork and other roofing associated accessories
- Installation of temporary/night seals to prevent water intrusion at areas in-progress
- Protection of installed areas from construction traffic and other trades

2.1.8 07 92 00 - Joint Sealants

Quality Assurance Observations: Joint sealant and backing materials, primers (if necessary), substrates and joint configurations and dimensions, backing material and sealant installation and tooling will be observed for compliance with requirements.

Field-Adhesion Testing: Field test joint sealant adhesion to joint substrate as follows:

1. Test Methodology: According to Method A, Tail Procedure, or Method B, Flap Procedure of ASTM C1521.
2. Evaluation of Results: Sealant not evidencing adhesive failure from testing or noncompliance with other indicated requirements will be considered satisfactory.

It is recommended that the sealant installer is present to witness/assist with the testing so that results are understood and each test location is known and repaired in a timely manner.

2.1.9 08 43 13 - Aluminum-Framed Storefronts

Field Testing - Testing and inspecting of representative areas to determine compliance of installed systems.

1. Field Testing
 1. Water Spray Test: Areas shall be tested according to AAMA 501.2.
 - Test Area: As designated by Architect and shall not evidence water penetration in accordance with AAMA 501.2
 - Test Frequency:
 1. Perform a minimum of two tests in each designated area as directed by Architect.
 2. Conduct test in each area prior to 10 percent and 50 percent completion of this work.

2.1.10 08 44 13 - Glazed Aluminum Curtain Walls

Field Testing - Testing and inspecting of representative areas to determine compliance of installed systems.

1. Water Spray Test: Areas shall be tested according to AAMA 501.2.

- Test Area: As designated by Architect and shall not evidence water penetration in accordance with AAMA 501.2
- Test Frequency:
 1. Perform a minimum of two tests in each designated area as directed by Architect.
 2. Conduct test in each area prior to 10 percent and 50 percent completion of this work.

2.1.11 Testing Assumptions & Limitations

The following assumptions and limitations apply to all testing scopes offered in this proposal:

- *ECS will be providing testing services only. Investigative and/or consulting services can be provided on a unit rate basis. Our units rates for professional staff are attached should such efforts be necessary.*
- *Locations of the specimens to be tested are selected by others, or as specified.*
- *Our pricing is based on maximum chamber sizes of 100 SF.*
- *ASTM E783 Air Infiltration testing and ASTM E1105 Water Penetration testing will be performed in sequence on the same specimen, air infiltration testing first and water penetration second.*
- *The contractor will provide water (30 psi or higher) and electrical power within 100 feet of test areas, as required for the testing.*
- *If specimens to be tested are not on ground level, the contractor will provide safe access to the exterior of the specimens being tested. This includes man-lifts, swing-stages, etc. and an operator to run the equipment, if necessary. If safe access is not provided, ECS can arrange our own access for a pre-determined additional fee.*
- *The testing should take place prior to the installation of interior finishes. If the removal of interior finishes is required, the contractor will be responsible for removing the finishes and replacing them once testing has been completed.*
- *ECS is not responsible for any damage to sealants, finishes, or any other construction elements as a result of the testing.*

2.2 OPTIONAL ADD ALTERNATE SERVICES

ECS has the capability and experience to perform the following scope of services, among other services, should the need arise during the project duration:

- Building Envelope Design Document Review
- Building Envelope Submittal Review
- Additional Building Envelope Quality Assurance Observations
- Water Penetration and Air Infiltration Testing
- Electronic Leak Detection (ELD) Testing
- Witnessing of Water Flood Testing
- Air Barrier Adhesion Testing
- Whole Building Air Testing

2.3 Safety

ECS personnel are responsible for their own personal safety. While on site, if ECS personnel deem a condition is unsafe and our work cannot be completed, the contractor will be notified of the unsafe condition. ECS personnel will not proceed further with the work in that area until the unsafe condition is corrected. ECS is not the competent person on the construction site and must rely on the daily safety inspections of the Contractor's competent individuals of general use items such as temporary walkways, ladders, stairways, barriers and barricades, hole covers, scaffolds, and aerial platform equipment, et al. ECS personnel are provided with the requisite personal fall protection training and equipment; however, we will not be providing and setting up our own anchor points and life lines, etc., and must rely on the contractor(s) to provide the basic means of accessing areas that require personal fall arrest equipment.

2.4 Reporting

You will be issued daily field reports as part of our service. Because our reporting systems are fully computerized, we are generally able to submit these reports within 48 hours of site visits. If deficiencies in procedures or materials are recognized in the field, the general contractor will be verbally notified, so the problem may be resolved prior to the performance of additional work. Copies of reports will be forwarded to each party designated by the client, at no extra charge, as part of our service.

3.0 ESTIMATED COSTS

The total estimated cost for this project is outlined below. This total estimated cost proposal has been prepared for your budgeting purposes and is the product of careful consideration of the information available to us during the preparation of this proposal.

Deviations from the assumed quantities and timeframes detailed in the attached estimate are not included and will be considered as an addition to our proposed scope of service. Actual costs may be greater or less than the estimate based upon actual quantities that will be calculated using the enclosed schedule of unit rates.

Estimate

Building Envelope Construction Administration	Quantity	Rate	Units	Fee
Preconstruction Meetings	1	\$ 1,400.00	each	\$ 1,400.00
RFI/Shop Drawing/Submittal Review	30	\$ 210.00	per hour	\$ 6,300.00
Activity Total:				\$ 7,700.00
Mockup QAO and Testing	Quantity	Rate	Units	Fee
Mockup QAO Field Visit and Report	1	\$ 1,600.00	each	\$ 1,600.00
Activity Total:				\$ 1,600.00
Building Envelope Quality Assurance Observation	Quantity	Rate	Units	Fee
Building Envelope QAO Field Visit and Report	25	\$ 1,600.00	each	\$ 40,000.00
Activity Total:				\$ 40,000.00
Building Envelope Testing	Quantity	Rate	Units	Fee
ASTM E1186 Chamber Smoke Pencil Testing	1	\$ 4,000.00	per day	\$ 4,000.00
AAMA 501.2 Nozzle Water Testing	4	\$ 3,500.00	per day	\$ 14,000.00
ASTM C1521 Sealant Adhesion Testing (performed during QAO visit)	8	\$ 300.00	per test	\$ 2,400.00
Activity Total:				\$ 20,400.00
Estimated Total:				\$ 69,700.00



3.1 Billing and Contract Conditions

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. They are normally processed on or around the 10th of each month and represent costs incurred during the previous 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 is 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.

4.0 PROJECT UNIT RATES

Services provided for this project will be billed in accordance with the unit rate schedule provided below. Charges for personnel will be made for time spent in work, including travel, directly related to the project as requested.

The daily unit rates that have been included above will cover the technician's on-site time, travel time and miles, and engineering/administrative services needed for preparing reports. It should be noted that the daily unit rates for the Building Envelope Technicians are based on a maximum of 4 hours of on-site time. If additional on-site time, beyond 4 hours is needed for observation and testing during a scheduled visit, the costs associated with the additional time will be invoiced in accordance with the applicable unit rates listed below which also take into consideration the previously mentioned expenses.

Our unit rates are based on normal business hours of 7:00 a.m. to 4:00 p.m. Monday through Friday. Same-day requests, and work performed outside normal hours, on Saturday, Sunday, Holidays, and night work (starting after 4:00 p.m.) will be invoiced at a rate of 1.5 times the unit rates below. Parking and toll expenses are not included in our budget estimates but will be invoiced at cost.

Should supplemental services be deemed necessary at a later date, they would be invoiced in accordance with these unit rates, or as agreed upon in advance.

Project Unit Rates

DESCRIPTION	UNIT RATE
Building Envelope Principal	\$260/hour
Senior Building Envelope Project Manager	\$200/hour
Building Envelope Project Manager	\$150/hour
Senior Field Technician	\$110/hour
Administrative	\$80/hour
Mileage	\$1.00/mile

5.0 PROPOSAL ACCEPTANCE

If the scope of work as outlined above and the attached Terms and Conditions of Service are acceptable to you, please sign the Proposal Acceptance Form on behalf of City of Hutchins and return one copy of the Proposal Acceptance Form to ECS. Please note that the attached Terms and Conditions of Service are incorporated herein by reference and are an integral part of this agreement between us.

If the Client has a Subconsultant Agreement that you wish to execute with ECS that has not been agreed to before, ECS reserves the right to charge for the time required to fully review and negotiate agreeable terms, including fees from ECS' internal Attorney counsel.



This proposal is valid for a period of sixty days; beyond that date it may be necessary to revise our schedule or fee.

Fully completing and signing the attached Proposal Acceptance Form on behalf of City of Hutchins will provide formal authorization for ECS to enter the site and perform the above work, as well as providing proper invoicing instructions and distribution lists for reports and correspondence. Please provide any specific instructions or details not covered in this proposal on the attached Proposal Acceptance Form.

6.0 PROPOSAL ACCEPTANCE FORM

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

PROPOSAL ACCEPTANCE FORM (Please Print or Type)	
Project Name	Hutchins Recreation Center and Library
Location	401 N JJ Lemmon Rd, Hutchins, Texas 75141
Fee Estimate	\$69,700.00

CLIENT INFORMATION	
Signature - Authorized Representative for Entity Responsible for Payment	
Print Name of Client and Company	
Date of Execution	
Proposal Addressee - Name	Blake Moore
Proposal Addressee - Company	City of Hutchins
INVOICE INFORMATION	
Please Print Below if Invoice Addressee is Different Than Proposal Addressee or Special Invoicing Instructions	
Invoice Addressee - Name	
Invoice Addressee - Company	
Invoice Addressee - Street Address	
Invoice Addressee - City, State, Zip	
Invoice Addressee - Email	
Invoice Addressee - Phone Number	
Purchase Order Number	
Client Project/Account Number	
Pay Application Required	



7.0 TERMS AND CONDITIONS OF SERVICE

Attached to this proposal and an integral part of our proposal, are our “Terms and Conditions of Service”. These terms and conditions represent the current recommendations of the Association of Soil and Foundation Engineers, the Consulting Engineers’ Council, and the Geotechnical Division of the American Society of Civil Engineers.

Our insurance carrier requires that we have a signed contract prior to the release of any information. This letter is the agreement for our services. Your acceptance of this proposal should be indicated by signing and returning the enclosed Proposal Acceptance form to us.



ECS SOUTHWEST, LLP TERMS AND CONDITIONS OF SERVICE

The professional services ("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 and shall form the Agreement between ECS and CLIENT.

- 1.0 INDEPENDENT CONSULTANT STATUS** – ECS shall serve as an independent professional consultant to CLIENT for Services on the Project and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants.
- 2.0 SCOPE OF SERVICES** – It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S agents, contractors and consultants ("Contractors"). CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.
- 3.0 STANDARD OF CARE**
- 3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guarantee of any nature whatsoever.
- 3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT and/or CLIENT'S contractors and consultants. 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's 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's 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's sole right to make.
- 4.0 CLIENT DISCLOSURES**
- 4.1 Where the Services requires ECS to penetrate a surface, CLIENT shall furnish and/or shall direct CLIENT'S or CLIENT'S Contractors to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.
- 4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.
- 4.3 If any Hazardous Materials are discovered or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees or fee schedule to reflect any additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 INFORMATION PROVIDED BY OTHERS** – CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S Contractors, including such information that becomes incorporated into ECS documents.
- 6.0 CONCEALED RISKS** – CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. CLIENT agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS's additional services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
- 7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the site for the performance of Services. CLIENT hereby grants ECS and its agents, subcontractors and/or subconsultants ("Subconsultants"), the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS and its Subconsultants harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.
- 7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS's 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 damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS's 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's 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's 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. CLIENT shall notify ECS in writing of any private utilities or nonferrous piping that would not be found with standard magnetic detection devices. CLIENT shall be charged an additional fee if ECS is requested to use ground penetrating radar in an effort to locating underground utilities or structures.
- 8.3 CLIENT shall indemnify, defend, and hold ECS harmless 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's 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's or ECS's Subconsultant's request for utility marking services made in accordance with local industry standards.
- 9.0 SAMPLES**
- 9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the first issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.
- 9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing by-products in accordance with applicable laws and regulations.
- 10.0 ENVIRONMENTAL RISKS**
- 10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
- 10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS's subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

- 10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
- 10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this Agreement to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.
- 10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.
- 10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

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

12.0 SAFETY

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

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any of CLIENT'S Contractors or any of their subcontractors.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full-time basis to lower the risk of defective or incomplete work being installed by CLIENT'S Contractors. If CLIENT elects to retain ECS on a part-time or on-call basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risk that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS's part time monitoring and testing in exchange for CLIENT'S receipt of an immediate cost savings. Unless the CLIENT can show that ECS's errors or omissions are contained in ECS's reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part-time or on-call basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all Damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from work that was monitored or tested by ECS on a part-time or on-call basis.
- 14.0 **CERTIFICATIONS** – CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS's 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's professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the professional fees section of the Proposal. Any estimate of professional fees stated shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
- 15.2 CLIENT agrees that all professional fees and other unit rates may be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of one percent (1%).
- 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's 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. The parties acknowledge and agree that any suit, action or proceeding arising out of or related to failure of CLIENT to pay ECS's invoices pursuant to the Terms of this Agreement shall be instituted in Fairfax County Circuit Court located in Fairfax, Virginia or such other court of competent jurisdiction, in ECS's sole and absolute discretion. Each of the parties waives any objection that it may have to the venue of any such suit, action, or proceeding, and each of the parties hereby irrevocably consents to the personal jurisdiction of any such court in any such suit, action or proceeding.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice date. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set offs by CLIENT. CLIENT acknowledges that all payments made by credit card shall be subject to a three percent (3%) convenience fee.
- 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's Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

16.1 CLIENT and CLIENT's Contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS's opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS's 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'S TOTAL LIABILITY TO CLIENT ARISING FROM ECS'S 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's 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's total aggregate liability to CLIENT shall not exceed \$50,000, or the total fee for the services rendered, whichever is greater.

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

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

19.0 INDEMNIFICATION

19.1 Subject to Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS's negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS's negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)

19.2 To the fullest extent permitted by law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ("Damages") caused in whole or in part by the acts, errors, or omissions of the CLIENT or CLIENT's employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.

19.3 It is specifically understood and agreed that in no case shall ECS be required to pay Damages disproportional to ECS's culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNERS' 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.

21.2 In the event of any dispute or claim between CLIENT and ECS arising out of or 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's 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's opinions rendered in connection with ECS's 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's Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen calendar (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Except as otherwise set forth herein including the provisions in Section 15.4, litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS's office contracting with the CLIENT is located. To the maximum extent allowed by law, the also parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

- 25.1 CLIENT or ECS may terminate this Agreement for breach, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 TIME BAR TO LEGAL ACTION – Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this Agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS's 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 CYBERSECURITY AND CONTROLLED UNCLASSIFIED INFORMATION (CUI)

- 30.1 CLIENT shall not use, modify, disclose or transfer ECS data in any manner that may adversely affect the integrity, security, or confidentiality of the data. CLIENT shall implement and maintain appropriate administrative, physical, and technical safeguards to protect its information systems and data from cyberthreats including, but not limited to, unauthorized access, use, disclosure, modification, or destruction. CLIENT shall be solely responsible for the consequences of any cybersecurity incident, breach, or compromise (referred to herein as a "Cybersecurity Incident") impacting its systems, including those resulting in unauthorized access to any project data, client information, or confidential materials provided by ECS. CLIENT will not input, insert, use, share, or transmit any confidential information within any generative artificial intelligence application (i.e., ChatGPT, Bing Chat, Google Bard, etc.), whether external or internal.
- 30.2 CLIENT understands and agrees that under this contract it will not forward any Controlled, Unclassified Information (CUI), as that term is defined by the government, without first (a) notifying ECS at least three (3) working days prior to providing such data, and (b) ensuring that all such CUI data is marked as CUI prior to its delivery to ECS. CLIENT assumes all responsibility and liability for its failure to comply with this provision.

31.0 TITLES; ENTIRE AGREEMENT

- 31.1 The titles used herein are for general reference only and are not part of the Terms.
- 31.2 These Terms together with the Proposal, including all exhibits, appendices, and other documents appended to it, constitute the entire agreement between CLIENT and ECS ("Agreement"). CLIENT acknowledges that all prior understandings and negotiations are superseded by this Agreement.
- 31.3 CLIENT and ECS agree that subsequent modifications to the Agreement shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 31.4 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.
- 31.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT's acceptance of this Proposal and these Terms and their agreement to be fully bound to them. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.