



October 20, 2023

City of Oregon City
13895 Fir Street
Oregon City, OR 97045

Attention: John M. Burrell

Proposal
Geotechnical Engineering Services
1795 Washington Street Property
Oregon City, Oregon
Project: OregonCity-34-01

INTRODUCTION

GeoDesign, Inc. dba NV5 (NV5) is pleased to submit this proposal to provide geotechnical engineering services for the 1795 Washington Street property. The property is owned by the City of Oregon City (City), and is currently leased to Clackamas Landscape Supply Inc. The site is on the west edge of the historical Rossman Landfill and approximately 6.8 acres in size. The site is bounded by the Union Pacific Railroad mainline to the west and Washington Street to the east.

BACKGROUND

We understand that the City wishes to undertake a general geotechnical evaluation as part of marketing efforts for eventual sale of the property. At the request of the City, the proposed evaluation will also extend into the public right-of-way at the north boundary of the property. Portions of the site were previously used for lumber processing and storage, and wood debris or other deleterious undocumented fill may be present on site. Based on historical maps, no portion of the adjacent Rossman Landfill extends beneath the site.

SCOPE OF SERVICES

The purpose of our scope is to provide general geotechnical engineering recommendations for use in the sale and marketing of the property. Specifically, we propose the following scope of services:

- Review published geotechnical data and our in-house files for existing information on subsurface conditions in the site vicinity.
- Coordinate and manage the field explorations, including utility locates and scheduling contractors and NV5 staff.
- Conduct a subsurface exploration program consisting of up to five borings drilled to depths of up to 50 feet below ground surface, or to practical refusal if encountered shallower.
- Maintain a continuous log of the explorations and collect soil samples at representative intervals.
- Install a single vibrating wire piezometer in one boring to provide groundwater elevation data and information on seasonal groundwater fluctuations at the site.
- Conduct a laboratory testing program. Specific laboratory tests will be selected based on the subsurface conditions encountered. For estimating purposes, we have assumed the following laboratory testing will be performed:
 - Up to 20 moisture content determinations in general accordance with ASTM D2216
 - Up to eight particle-size analyses in general accordance with ASTM D1140 and/or ASTM C117
 - Up to three Atterberg limits tests in general accordance with ASTM D4318
- Provide general recommendations for site preparation and grading, including temporary and permanent slopes, fill placement criteria, suitability of on-site soil for fill, trench excavation and backfill, subgrade preparation, and wet weather construction.
- Provide generalized foundation support recommendations, including preferred foundation type, allowable bearing pressure, lateral resistance parameters, and settlement estimates.
- Provide recommendations for preparation of floor slab subgrade.
- Recommend design criteria for retaining walls, including lateral earth pressures, backfill, compaction, and drainage.
- Provide recommendations for construction of asphalt concrete (AC) pavement for on-site access roads and parking areas, including subbase, base course, and AC paving thickness.
- Evaluate groundwater conditions at the site and provide general recommendations for temporary and permanent dewatering (if required).
- Provide seismic design recommendations in accordance with the procedures outlined in the applicable State of Oregon Structural Specialty Code. We have assumed that a site-specific seismic hazard evaluation will not be required.
- Prepare a geotechnical engineering report that presents our findings, conclusions, and recommendations.

SCHEDULE AND FEE

We can schedule the field exploration upon receiving authorization to proceed. Drilling subcontractors are typically booked within six to eight weeks of authorization. Our geotechnical report can be provided within four weeks after field work is complete. We can provide a verbal summary of our preliminary findings within a week after the field work is complete.

Our services will be provided on a time-and-materials basis for the not-to-exceed total fee indicated below in accordance with the Schedule of Charges and General Terms and Conditions that are attached to and part of this agreement. The following provides a breakdown of our fee estimate.

<u>Item</u>	<u>Fee</u>
NV5	
Field Work and Equipment	\$4,500
Laboratory Testing	2,000
Analysis and Report Preparation	3,550
Project Management	<u>400</u>
Subtotal	\$10,450
Subcontractor	
Private Utility Locator	\$350
Drilling	<u>20,350</u>
Subtotal	\$20,700
Total	\$31,150

Our cost is based on the following assumptions:

- Site accessibility will be arranged by others.
- Field work can be conducted during standard business days and hours (Monday through Friday, 7 a.m. to 5 p.m.).
- Contaminated soil will not be encountered in the explorations.
- Soil cuttings can be left on site.
- Infiltration testing is not required.

Services requested in addition to the preceding scope of services will be billed on a time-and-materials basis.

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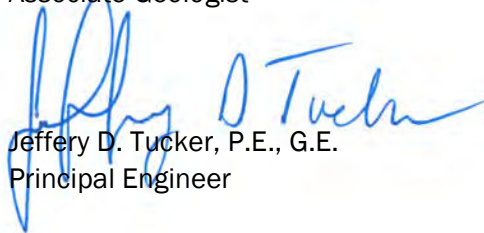
We appreciate the opportunity to submit this agreement and look forward to working with you on this project. Please do not hesitate to contact us if you have questions or require additional information. To formally authorize our services, return a signed copy of this agreement.

Sincerely,

NV5



John C. Hook, R.G.
Associate Geologist



Jeffery D. Tucker, P.E., G.E.
Principal Engineer

JCH:JDT:sn

Attachments

One copy submitted

Document ID: OregonCity-34-01-102023-geop.docx

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The scope of services outlined in this agreement, the fees, and the General Terms and Conditions are hereby accepted and GeoDesign, Inc. dba NV5 is authorized to proceed. This agreement constitutes the entire agreement between the Client and GeoDesign, Inc. dba NV5 and supersedes all prior written or oral understandings. If the client does not sign our proposal, but instead gives us a notice to proceed, then that shall also constitute a contract.

_____	by	_____
Organization		Signature*
_____		_____
Date		Printed Name

		Title

*Individual with contracting authority and responsible for payment of NV5's fees.

GEOTECHNICAL, GEOLOGICAL, AND MINE CONSULTING SCHEDULE OF CHARGES

COMPENSATION

Our compensation will be determined on the basis of time and expenses in accordance with the following schedule unless a fixed fee amount is so indicated in the proposal or services agreement. Contracted professional and technical services will be charged at the applicable hourly rates as listed below. Staff time spent in depositions, trial preparation, and court or hearing testimony will be billed at 2 times the below rates. Time spent in either local or inter-city travel, when travel is in the interest of this contract, will be charged in accordance with the foregoing schedule; when traveling by public carrier, a maximum charge of eight hours per day will be made. Current rates are as follows:

Personnel	Hourly Rate	Personnel	Hourly Rate
Support Staff	\$ 81	Technical Specialist I	\$ 152
Project Assistant/Technical Editor	\$ 95	Technical Specialist II	\$ 168
Senior Project Assistant/Technical Editor	\$ 102	Senior Technical Specialist	\$ 183
Technician I	\$ 87	Project Manager I	\$ 162
Technician II	\$ 100	Project Manager II	\$ 172
Senior Technician	\$ 106	Senior Project Manager	\$ 184
CAD	\$ 106	Associate	\$ 201
Senior CAD Technician	\$ 118	Senior Associate	\$ 214
Staff I	\$ 111	Principal	\$ 235
Staff II	\$ 127	Senior Principal	\$ 245
Staff III	\$ 140		

Equipment	Rate
Air compressor (per day)	\$ 62
Bladder pump (includes generator) (per day)	\$ 129
Brass/stainless steel rings (each)	\$ 12
Cement amending field tool (per day)	\$ 25
Cement scale and pan (per day)	\$ 31
Concrete field equipment (per day)	\$ 31
Core drill (per day)	\$ 248
Crack monitor (each)	\$ 37
Cross-hole sonic logger (CSL) (per half day)	\$ 279
Cross-hole sonic logger (CSL) (per day)	\$ 557
D&M sampling kit (per day)	\$ 25
Data logger (per day)	\$ 13
Data logger (per week)	\$ 47
Data logger (per month)	\$ 118
Data recording for VW Instrument (per day)	\$ 13
Disposable bailers (each)	\$ 17
Double-ring infiltrometer (per day)	\$ 81
Drilled shaft inspection camera (DSIC) (per half day)	\$ 557
Drilled shaft inspection camera (DSIC) (per day)	\$ 1,115
Drilled shaft inspection camera (DSIC) (per week)	\$ 2,106
Drive probe (per day)	\$ 12
Dynamic cone penetrometer (DCP) (per day)	\$ 118
Electric sampling pump (per day)	\$ 32
Falling weight deflectometer (FWD) (per day)	\$ 2,100
Falling weight deflectometer (FWD) with GPR (per day)	\$ 3,586
Field California bearing ratio (CBR) equipment (each)	\$ 273
Field equipment (per day)	\$ 12
Field vane (per day)	\$ 62
Flag tape rolls (each)	\$ 6
Generator (per day)	\$ 62
Global positioning system (GPS) – differential (per day)	\$ 118
Global positioning system (GPS) – hand held (per day)	\$ 35
Ground penetrating radar (GPR) – cart mounted (per day)	\$ 619
Ground penetrating radar (GPR) – truck mounted (per day)	\$ 1,486
Hand auger (per day)	\$ 43
Hydroacoustic monitoring equipment (per day)	\$ 310
Increment borer (timber) (per day)	\$ 59
Laptop computer use (per day)	\$ 19
Mobile laboratory (per month)	\$ 1,260
Nuclear density gauge (per hour)	\$ 12
pH/conductivity/temperature meter (per day)	\$ 52
Pile Driving Analyzer® (PDA) (per day)	\$ 619

GEOTECHNICAL, GEOLOGICAL, AND MINE CONSULTING SCHEDULE OF CHARGES

Equipment	Rate
Pile Integrity Tester (per day)	\$ 248
Post pounder (per day)	\$ 12
Pressure Transducer Data Logger (per day)	\$ 150
Range finder (per day)	\$ 12
Resistivity meter (per day)	\$ 124
Roto-hammer drill (per day)	\$ 93
Roto-hammer drill (per week)	\$ 341
Sand cone field density kit (per day)	\$ 25
Satellite phone (per day)	\$ 25
Saximeter (per day)	\$ 25
Schmidt hammer (per day)	\$ 124
Seismic equipment (per day)	\$ 619
Seismic source (per day)	\$ 248
Shelby tube with caps (each)	\$ 25
Sidewalk closure signage (per day)	\$ 24
Site reconnaissance kit (each)	\$ 25
Slope inclinometer reading (per day)	\$ 180
Soil sample rings (each)	\$ 12
Sondex settlement probe (per week)	\$ 124
Spectral analysis of surface waves (per day)	\$ 1,858
Specialty software (MODFLOW, PLAXIS, Slope/W, etc., per hour)	\$ 13 - 62
Thermometer – infrared (per day)	\$ 12
Total Station – survey equipment (per hour)	\$ 62
Transit level and tripod (per day)	\$ 37
Turbidity monitor (per day)	\$ 43
Unmanned aerial vehicle (DGI Mavic 2) (per day)	\$ 525
Unmanned aerial vehicle (Trimble Ux5-HP) (per day)	\$ 1,050
Vehicle (company) usage (full day, plus \$0.71 per mile charge)	\$ 25
Vehicle (personal) usage (per mile)	\$ 0.71
Vibrating wire piezometer (each)	\$ 619
Vibration monitoring equipment (per day)	\$ 65
Vibration monitoring equipment (per week)	\$ 313
Vibration monitoring equipment (per month)	\$ 920
Vibration monitoring equipment (per month, long term)	\$ 562
Vibration monitoring equipment, automated (per month)	\$ 1,300
Vibrocore (per day)	\$ 495
Water level meter (per day)	\$ 52
WSDOT bridge toll	\$ 4.20
Ziplevel Pro 2000 (per day)	\$ 56
Reproduction	
CD (each)	\$ 2.25
	Black/White
8 ½ x 11 (each)	\$0.11
11 x 17 (each)	\$0.22
D-size plots (each)	\$ 28.09
D-size scan (each)	\$ 14.04
OTHER SERVICES, SUPPLIES, AND SPECIAL TAXES	

Outside services (equipment, supplies, and facilities not furnished in accordance with the above schedule, and any unusual items of expense not customarily incurred in our normal operations) are charged at cost plus 12 percent. This includes shipping charges, subsistence, transportation, printing and reproduction, miscellaneous supplies and rentals, surveying services, drilling equipment, construction equipment, watercraft, aircraft, and special insurance that may be required. Specialized equipment will be quoted on a per-job basis. In-house disposable field supplies (routinely used field supplies stocked in-house by NV5) at current rates. Taxes required by local jurisdictions for projects in specific geographic areas will be charged to projects at direct cost.

All rates are subject to change upon notification.

GEOTECHNICAL AND GEOLOGICAL LABORATORY SCHEDULE OF CHARGES

TYPE OF TEST	UNIT PRICE
Atterberg Limits (ASTM D4318)	\$ 201
CBR with 3-Point Proctor (ASTM D1883)	\$ 767
Compaction (ASTM D1557-07/ASTM D698; Methods A, B, and C)	
1 Point	\$ 118
4 Points	\$ 283
Consolidation (ASTM D2435; with two timed rebounds)	\$ 519
Direct Shear (ASTM D3080)	
1 Point	\$ 286
3 Points	\$ 546
Expansion Index of Soil (ASTM D4829)	\$ 292
Moisture Content – Oven Method (ASTM D2216)	\$ 30
Moisture/Density (ASTM D7263)	
Rings	\$ 45
Shelby tubes	\$ 45
Organic Content (ASTM D2974)	\$ 104
Particle-Size Analysis	
Percent passing No. 200 (ASTM C117/ASTM D1140)	\$ 98
Sieve with No. 200 wash (ASTM C117/ASTM C136)	\$ 156
Combined sieve and hydrometer (ASTM D422-63)	\$ 260
Oversize sieve (ASTM C117-04/ASTM C136)	\$ 260
Permeability	
Rigid wall constant/falling head (Army Corps Eng. EM 1110-2-1906, VII-13)	\$ 456
Flexible wall with triaxial cell (ASTM D5084)	\$ 520
Flexible wall for cohesive soil (ASTM D5084/ASTM D4767)	\$ 705
pH of Soil (ASTM G51)	\$ 104
Resilient Modulus (AASHTO T 307)	
In situ sample	\$ 743
Remolded sample (includes compaction and sample preparation)	\$ 1,115
Rice Density (ASTM D2041)	\$ 156
Sand Equivalent (ASTM D2419)	\$ 234
Soil Resistivity (ASTM G57)	\$ 240
Specific Gravity	
Bulk specific gravity – asphalt (Parafilm coated) (ASTM D1188)	\$ 58
Maximum specific gravity – asphalt (Rice) (ASTM D2041)	\$ 118
Specific gravity – bulk specific gravity – asphalt (ASTM D2726)	\$ 20
Specific gravity – coarse aggregate (ASTM C127)	\$ 92
Specific gravity – fine aggregate (ASTM C128)	\$ 124
Specific gravity – Soil (ASTM D854)	\$ 130
Swell (ASTM D4546)	
Method A	\$ 410
Method B	\$ 286
Method C	\$ 716

GEOTECHNICAL AND GEOLOGICAL LABORATORY SCHEDULE OF CHARGES

TYPE OF TEST	UNIT PRICE
Triaxial Compression	
Unconsolidated, undrained (back pressure saturation) (ASTM D2850)	\$ 396
Consolidated, undrained, 1 point (ASTM D4767)	\$ 520
Consolidated, undrained, strength envelope (ASTM D4767)	\$ 1,561
Load-controlled cyclic (ASTM D5311)	\$ 1,561
Unconfined Compression	
Undisturbed soil (ASTM D2166)	\$ 150
Amended soil (ASTM D1633)	\$ 102
Sample Preparation (per hour)	\$ 81

Cyclic Direct Simple Shear

Test No.	Test Description	Unit Price
1	Strain-Controlled Cyclic Direct Simple Shear Test: Determine secant shear modulus and damping ratio using up to 100 cycles at a specified single shear strain amplitude of between 0.1% and 2%. Test conducted using a sinusoidal wave with a frequency of up to 5 Hz and a vertical stress of up to 1 MPa. One sample and up to three strain levels. Consolidation periods for each stage of up to 24 hours.	\$1,350
2	Stress-Controlled Cyclic Direct Simple Shear Test: Determine cyclic stress ratio and vertical stress ratio using up to 100 cycles at three specified stress ratios using a sinusoidal wave with a frequency up to 5 Hz. Test conducted with vertical stresses of up to 1 MPa. Three samples with one cyclic stress level each. Consolidation period of up to 24 hours per sample.	\$1,800
3	Strain Rate-Controlled Static Direct Simple Shear Test: Determine stress-strain relationship of a single sample at specified strain rates. Tests conducted with vertical stresses of up to 1 MPa. One sample at three strain rates.	\$1,000
4	Stress-Controlled Cyclic Direct Simple Shear Test: Test conducted on one sample at a specified stress ratio using a sinusoidal wave with a frequency up to 5 Hz for up to 100 cycles with maximum vertical stresses of 1 MPa. One sample with one cyclic stress ratio.	\$750
5	Post-Cyclic Static Direct Simple Shear Test: Stress-strain relationship at specified shear strain rate. Tests conducted with vertical stresses of up to 1 MPa. One sample in combination with tests 1, 2, and 4.	\$250
6	Post-Cyclic Consolidation in Direct Simple Shear Test: Determine post-cyclic volumetric strain over time. Conducted with vertical stresses of up to 1 MPa. One sample in combination with tests 1, 2, and 4.	\$250
7	Shear Wave Velocity: Measure shear wave velocity using Bender Elements based on first shear wave arrival. One sample in combination with tests 1, 2, and 4.	\$160
8	Shear Wave Velocity: Measure shear wave velocity using Bender Elements based on first shear wave arrival. Stand-alone sample without DSS testing.	\$250
9	Cost per additional day for consolidation of DSS sample	\$300

Other tests charged at hourly rates. NV5 reserves the right to subcontract any laboratory testing listed in our scope of work and to apply charges for subcontracted testing at the rates listed above.

GENERAL TERMS AND CONDITIONS

1. The Agreement. This Agreement between the parties, which shall describe and govern Client's engagement of "Consultant" to provide services ("Services") in connection with the project ("Project") identified in the proposal ("Proposal"), consists of the Proposal, these terms and conditions, Consultant's fee schedule, and any exhibits or attachments referenced in any of these documents. Together these elements constitute the entire agreement between the parties, superseding any and all prior negotiations, correspondence, or agreements, either written or oral, with respect to the subject matter of this engagement. Consultant requests written acceptance of the Agreement through its Proposal Acceptance Form, but the following actions shall also constitute Client's acceptance of the Agreement: (1) issuing an authorizing purchase order for any of the Services; (2) authorizing Consultant's presence on site; or (3) notification, written (including e-mail) or oral, to Consultant to proceed with any of the Services.

2. Standard of Care. The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project. Data, interpretations and recommendations by Consultant will be based solely on information discovered by, or made available to, consultant during the course of the engagement. In connection with such information, Client recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change over time. Consultant shall not be responsible for the use or interpretation of such information by non-parties to this Agreement. Consultant shall not be held liable for problems that may occur if Consultant's recommendations are not followed.

3. Site Access and Conditions. Client will provide Consultant access to the Project site for all equipment and personnel necessary for the performance of the Services. As required to effectuate such access, Client will notify all owners, lessees, contractors, subcontractors, and other possessors of the Project site that Consultant must be allowed free access to the site. While Consultant agrees to take reasonable precautions to minimize damage to the site, Client understands that, in the normal course of performing the Services, some damage may occur, and further understands that Consultant is not responsible for the correction of any such damage unless so specified in the Proposal. Client is responsible for the accuracy of locations for all subterranean structures and utilities. Consultant will take reasonable precautions to avoid known subterranean structures and utilities, and Client waives any claim against Consultant, and agrees to defend, indemnify, and hold Consultant harmless from any claim or liability for injury or loss of any party, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim with compensation to be based upon Consultant's prevailing fee schedule and expense reimbursement policy.

4. Cooperation and Project Understanding. To the extent requested by Consultant, Client will make available to Consultant all information in its possession regarding existing and proposed conditions at the site. Such information shall include, but not be limited to engineering reports, plot plans, topographic surveys, hydrographic data, soil data including borings, field and laboratory tests and written reports. Client shall immediately transmit to Consultant any new information concerning site condition which becomes available, and any change in plans or specifications concerning the Project to the extent such information may affect Consultant's performance of the Services. Client agrees, upon 24 hours oral or written notice, to provide a representative at the job site to supervise and coordinate the Services. Consultant shall not be liable for any inaccurate or incorrect advice, judgment or decision which is based on any inaccurate information furnished by Client and Client shall indemnify Consultant against claims, demands, or liability arising out of, or contributed to, by such inaccurate information.

5. Sample Disposal. Unless other arrangements are made, Consultant will dispose of all soil and rock samples remaining at the time of report completion. Further storage or transfer of samples can be arranged at Client's prior written request, subject to a reasonable charge by Consultant. Client acknowledges that contaminated drill cuttings, sample spoils, wash water, and other materials may be produced as a result of encountering hazardous materials at the site. In such event, Consultant shall properly contain, label, and store such materials on-site, and Client shall be responsible for its proper transportation and disposal. Consultant may be able to arrange for the transportation and disposal of hazardous materials at Client's request.

6. Construction Monitoring. If Consultant is engaged by Client to provide a site representative for the purpose of monitoring specific portions of any construction work, as set forth in the Proposal, then this Section 6 shall apply. If Consultant's engagement does not include such construction monitoring, then this Section shall be null and void. In connection with construction monitoring, Consultant will report observations and professional opinions to Client. Consultant shall report to Client any observed work which, in Consultant's opinion, does not conform to plans and specifications. Consultant shall have no authority to reject or terminate the work of any agent or contractor of Client. No action, statements, or communications of Consultant, or Consultant's site representative, can be construed as modifying any agreement between Client and others. Consultant's presence on the Project site in no way guarantees the completion or quality of the performance of the work of any party retained by Client to provide construction related services. Neither the professional activities of Consultant, nor the presence of Consultant or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon Consultant any responsibility for methods of work performance, superintendence, sequencing of construction, or safety conditions at the Project site. Client acknowledges that Client its general contractor or construction manager is solely responsible for job site safety, and warrants and agrees that such responsibility shall be made evident in any Project owner's agreement with the general contractor. Client also agrees to make Consultant an additional insured under any general contractor's general liability insurance policy. Prior to the commencement of the Work, Client shall provide Consultant with a certificate of insurance evidencing the required insurance. Such certificates shall be issued by an insurance carrier(s) acceptable to Consultant and shall be endorsed to include: (1) Consultant as additional insured; and (2) a waiver of subrogation as to Consultant. This insurance shall be primary to any insurance available to Consultant. In the event Consultant expressly assumes any health and safety responsibilities for hazardous materials or other items specified in this Agreement, the acceptance of such responsibility does not and shall not be deemed an acceptance of responsibility for any other health and safety requirements, such as, but not limited to, those relating to excavation, trenching, drilling or backfilling.

7. Project Changes. In the event Client, the Project owner, or other party makes any changes in the plans and specifications, Client agrees to hold Consultant harmless from any liability arising out of such changes, and Client assumes full responsibility unless Client has given Consultant prior notice and has received Consultant's written consent for such changes.

8. Ownership of Documents. All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by Consultant in connection with this engagement, shall remain the property of Consultant.

9. Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, Consultant will be paid for Services performed through the date of termination, plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

10. Risk Allocation and Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Client and anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant, for Services provided under this Agreement or \$50,000 whichever is more. Client agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

11. Discovery of Unanticipated Hazardous Materials. Client warrants that it has made reasonable efforts to inform Consultant of known or suspected hazardous materials on or near the Project site. The parties acknowledge that hazardous materials may exist at a site where there is no reason to believe they are present. Consultant and Client agree that the discovery of such unanticipated hazardous materials constitutes a changed condition which may require either a re-negotiation of the scope of Consultant's Services or termination of such Services or this Agreement. Consultant agrees to notify Client as soon as practicable should hazardous materials be encountered at the site. Client agrees that in the event of the discovery of hazardous materials at the site it will report such discovery to the proper authorities as required by Federal, State, and local regulations. Client agrees to make the required report at the recommendation of Consultant, or, if unable to do so, authorizes Consultant to make such report. Client also agrees to inform the Project site owner in the event that hazardous materials are encountered at the site. Notwithstanding any other provision of this Agreement, Client waives any claim against Consultant, and to the maximum extent permitted by law, agrees to defend, indemnify, and save Consultant harmless from any claim, liability and/or defense costs for injury or loss arising from the presence of hazardous materials on the Project site, including any costs created by delay of the Project and any costs associated with possible reduction of the property's value. Client is responsible for ultimate disposal of any samples secured by Consultant which are found to be contaminated.

12. Subsurface Conditions. Consultant cannot know or guarantee the exact composition of a site's subsurface, even after conducting a comprehensive exploratory program. Client acknowledges that there is a risk that drilling and sampling may result in contamination of certain subsurface areas. Although Consultant will take reasonable precautions to avoid such an occurrence, Client waives any claim against, and agrees to defend, indemnify and save Consultant harmless from any claim or liability for injury or loss which may arise as a result of subsurface contamination caused by drilling, sampling, or monitoring well installation. Client also agrees to adequately compensate Consultant for any time spent and expenses incurred in defense of any such claim.

13. Insurance. Consultant shall not (1) post a bond, (2) insure, or (3) indemnify Client against losses caused from the acts or omissions of other Contractors or Subcontractors that are not under contract to perform work for Consultant. Client shall require other Contractors and Subcontractors to carry adequate insurance coverage and any performance for Client to insure and indemnify Consultant against claims for damages and to insure compliance or work performance and materials with Project requirements. Client also agrees to make Consultant an additional insured under any general contractor's general liability insurance policy.

14. Resolution of Disputes. The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant, unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the State where the Project is located. This certification shall: (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. Any cause of action brought against Consultant shall be brought within one year of the work or Services performed under this Agreement.

15. Assigns. Client may not assign this Agreement or any right or obligation hereunder without the prior written consent of Consultant, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement.

16. Non-Solicitation & Hiring of Employees. To promote an optimum working relationship, the Client agrees in good faith not to directly or indirectly employ or otherwise engage any employee of Consultant or any person employed by Consultant within the prior twelve month period without the prior written consent of Consultant. This restriction shall apply during the term of and for a period of one (1) year after the termination of this Agreement. The Client further agrees that loss of any such employee would involve considerable financial loss of an amount that could not be readily established by Consultant. Therefore, in the event that Client should breach this provision and without limiting any other remedy that may be available to Consultant, the Client shall pay to Consultant a sum equal to the employee's current annual salary plus twelve (12) additional months of the employee's current annual salary for training of a new employee as liquidated damages.

17. Governing Law and Survival. The validity of this Agreement, these terms, their interpretation and performance shall be governed by the laws of the State in which the Project is located. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability, indemnification, and non-solicitation & hiring of employees shall survive the termination of this Agreement for any reason. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

18. Billing and Payment. Client shall pay Consultant the lump sum amount indicated in the Proposal, or, if no lump sum amount is indicated, in accordance with the schedule of fees or charges as shown in the Proposal or fee schedule. Backup data on billing will not be available unless prior arrangements have been made. Prior to initiation of the Services, Client is required to remit any retainer specified in the Proposal. Thereafter, Consultant will submit to Client invoices for the balance due, which shall be due and payable immediately upon submission. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Fee schedules are periodically revised. Unless otherwise agreed, new rates apply to ongoing work as such rates are issued. Should Consultant be called upon to testify for or on behalf of the Client on matters arising out of or related to the Work, Client shall compensate Consultant for its time at a rate of two times (2x) the Consultant's standard billing rates.

19. Waiver of Jury Trial. Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

20. Liability for Others. Consultant shall not be responsible for the acts or omissions of the Client, architect, architect's other consultants, contractor, subcontractor, other third parties or their respective agents, employees, assigns, successors, or other persons performing any of the work. Consultant shall promptly notify Client if Consultant becomes aware of any inconsistencies in the Services or information provided by other parties.

21. Delays. Consultant shall not be liable to Client for delays. Client shall indemnify, defend, and hold harmless Consultant from any actions or claims arising from delays.

22. Waiver. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

23. Enforceability. This Agreement shall be interpreted by the parties in a manner that ensures this Agreement's compliance with applicable local, state, federal, or foreign laws. The parties affirm that this Agreement is a collaborative effort between Client and Consultant, with no single party considered the drafter of this Agreement or having the drafting of this document construed against them.

24. Severability. Should a court find one of the provisions of this Agreement unenforceable, the remaining provisions of this Agreement shall remain in full force and affect.

25. Entire Agreement. To the extent allowed by law, any agreement that is part of the scope of Consultant's Services and incorporated by reference into this Agreement shall be subordinated to the terms and conditions of this Agreement where they conflict. This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.