

**WORK AUTHORIZATION # CM2500-WA01
 NASSAU COUNTY
 BOARD OF COUNTY COMMISSIONERS
 CONTINUING CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
 RFQ/BID NO. NC17-006**

Consultant:	CPH, Inc.
Contract Number:	CM2500
Contact Name:	Wade P. Olszewski, P.E.
Contact Number:	904-332-0999 x 4404
Email:	wolszewski@cphcorp.com

CURRENT WORK AUTHORIZATION			
Project Short Title: Site Plan Design Services for the Sheriff Vehicle Storage Garage			
		CONTRACT OVERVIEW	
Date Submitted	04/09/2018	Total of Previous Authorizations	\$0.00
Amount	\$36,319.91	This Work Authorization	\$36,319.91
Scheduled Completion	October 2018	Current Contract Total	\$36,319.91

This Work Authorization is to the AGREEMENT between Nassau County and the Consultant known as the Continuing Contract for Professional Engineering Services for Nassau County, Florida, dated January 8, 2018. The services to be provided under this Work Authorization are as follows:

ARTICLE 1. Services Described as:

CPH, Inc. shall design and permit an approximately 10,000 SF Sheriff Vehicle Storage Garage on approximately 1.5 acres, located in Nassau County, Florida, pursuant to scope of services dated April 9, 2018, attached hereto as Exhibit "A".

ARTICLE 2. Time Schedule

CPH, Inc. shall design and permit the project as projected in the estimated schedule attached hereto as Exhibit "B".

ARTICLE 3. Budget

CPH, Inc. will perform the scope of services outlined herein for a lump sum amount of \$36,319.91; breakdown of fees for each task are provided in the compensation section of Exhibit A and in the Billing Hourly Rate Computation, attached hereto as Exhibit "C".

Article 4. Other Provisions

The Services covered by this Work Authorization will be performed in accordance with the provisions set forth in the AGREEMENT referenced above and any of its attachments or schedules. This Work Authorization will become a part of the referenced AGREEMENT when executed by both parties.

In presenting this Work Authorization, Consultant agrees that:

Unless detailed herein, all drawings, data, electronic files and other information required for this Work Authorization has been accepted by Consultant. Specifically, all electronic files have been reviewed and accepted for the purposes of this Work assignment. Any additional information, including detailed scope of services are attached.

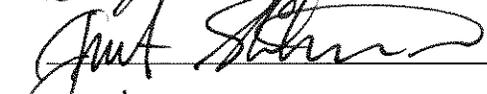
AGREED TO BY:

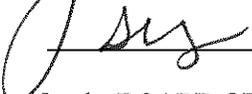
BY: 
 Print Name: Wade Olszewski, P.E.
 Title: Sr. Vice President
 Date: 4/25/18

RECOMMENDED AND APPROVED BY NASSAU COUNTY:

Nassau County Sheriff's Office Designee: 

Contract Management: 

Office of Management & Budget 
Call 4.30.18

County Manager: 

APPROVED by the County Manager, designee for the BOARD OF COUNTY COMMISSIONERS, the **16th** day of May, 2018.

ACCOUNT NO.: 65213521-562000 SHADM



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Suite 220
Jacksonville, FL 32256
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www.cphcorp.com

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
CPH, INC.
AND
THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY
FOR
SHERIFF VEHICLE STORAGE GARAGE
IN
NASSAU COUNTY, FLORIDA**

**MARCH 30, 2018
REVISED APRIL 9, 2018**

This Agreement is composed of Part I and Part II. Part I includes details of the services to be performed, timing of the services, and compensations. Part II (attached) contains the CPH's Standard Hourly Rate Table and Standard Contract Provisions, which are the general terms of the engagement between The Board of County Commissioners of Nassau County, herein after called the "CLIENT", and CPH, Inc., herein after called "CPH".

PART I

PROJECT DESCRIPTION

CLIENT proposes to design and permit an approximately 10,000± SF Sheriff Vehicle Storage Garage on approximately 1.5± acres, located in Nassau County, Florida. The project is located within the existing Nassau County Judicial Complex. This proposal assumes stormwater treatment for the project will be covered by the existing master permit and no additional stormwater design and permitting will be required.

SCOPE OF SERVICES

A. CONSULTANT

1.0 LIMITED DUE DILIGENCE AND CONCEPTUAL SITE PLAN

CPH will perform Limited Due Diligence of the project site. CPH will verify the proposed site's current zoning, future land use, building setbacks, green space and parking requirements, signage limitations, the approval process schedule, application forms, and application and review fees. CPH will also contact the Utility Companies that service the site to confirm availability of service, location of services, proposed tie-in locations, application forms or load sheets, and potential costs for extension of services to the site. Based upon the data gathered during the Limited Due Diligence, and utilizing the Boundary Description provided by the CLIENT, CPH will prepare a single (1) Conceptual Site Plan for the best utilization of the site. Within the fee identified for this task, it will allow up to two CLIENT requested modifications. Any alterations to the site plan after the second modifications will be handled as additional service, and billed in accordance with our Standard Hourly Rates. This task will be performed and billed as a lump sum service. Refer to the Compensation section of this proposal for the proposed fee.

2.0 PRELIMINARY DESIGN

Based on the CLIENT approved Conceptual Site Plan; CPH will prepare the Preliminary Engineering Plans. The preliminary plans will include the site dimension plan, as well as the preliminary infrastructure design to the proposed site. Plans will be prepared in accordance with the Local jurisdiction of Nassau County and St. Johns River Water Management District (SJRWMD). Storm Water Management will be designed in accordance with the current standards of the Local jurisdiction of Nassau County, and will include the "Best Management Practices" proposed by the St. Johns River Water Management District (SJRWMD). Plans will be supplied to the CLIENT in reproducible form at a suitable scale to fit on a twenty-four inch by thirty-six inch (24" x 36") plan sheet and will be accurate, legible, complete in design, and suitable for submittal to the Local jurisdiction of Nassau County for preliminary review and approval. The plans and data will be reviewed with the CLIENT, prior to submitting the plans to the Local jurisdiction of Nassau County. This task will be performed and billed as a lump sum service. Refer to the Compensation section of this proposal for the proposed fee.

3.0 FINAL DESIGN

Based on the CLIENT approved Preliminary Engineering Plans; CPH will prepare the Final Engineering Plans (Construction Plans). The final plans will include but may not be limited to the following sheets:

- Cover Sheet
- Boundary and Topographic Survey (Provided by Surveyor)
- Dimensional Site Plan
- Grading and Drainage Plan
- Utility Plan
- Pavement Sections
- Sedimentation/ Erosion Control Plan
- Paving and Drainage Details
- Striping and Signage Details
- Utility Details
- Sedimentation/ Erosion Control Details
- General Notes and Specifications
- Landscape Plan
- Landscape Details
- Irrigation Plan

Final Engineering plans will be prepared in accordance with the Local jurisdiction of Nassau County, SJRWMD, and FDOT. Storm Water Management will be designed in accordance with the current standards of the Local jurisdiction of Nassau County, and will include the "Best Management Practices" proposed by SJRWMD. Plans will be supplied to the CLIENT in reproducible form at a suitable scale to fit on a twenty-four inch by thirty-six inch (24" x 36") plan sheet and will be legible, complete in design, and suitable for submittal to the Local jurisdiction of Nassau County for final review and approval. The plans and data will be reviewed with the CLIENT, prior to submitting the plans to the Local jurisdiction of Nassau County. This task will be performed and billed as a lump sum service. Refer to the Compensation section of this proposal for the proposed fee. Any modifications to these plans requested by the CLIENT after the plans are prepared for submittal to the Local jurisdiction will be performed as an additional service and billed at the Standard Hourly Rates enclosed.

4.0 PERMITTING

Upon receipt of the CLIENT's approval of the respective plans listed above, CPH will prepare the permit applications and support data for the applicable regulatory agencies, including;

- Nassau County
- SJRWMD Letter Modification

If during the feasibility phase, any other agencies are identified as required to approve the project, an amendment to this agreement will be prepared. Unless specifically noted in this contract, no Rezoning, Land Use Changes, or Special Use Permits are included in this task. CPH will coordinate the processing of the applications through the regulatory agencies, including attendance a limited number of meetings with the agencies that may be necessary to receive the approval. Within this service are up to two (2) meetings or conference calls with each of the regulatory agencies, one (1) submittal of the applications and supporting documents, and two (2) response to agency comments. In order to minimize travel, meetings with multiple agencies will be scheduled, when possible. Meetings required beyond these will be handled as additional service, and billed in accordance with our Standard Hourly Rates. Should there be a potential for denial on an application, the CLIENT will be informed so they may make the appropriate arrangements to retain legal staff to address the denial should it occur. The CLIENT will be financially responsible for any application or filing fee required by the agencies. This task will be performed and billed as a lump sum service. Refer to the Compensation section of this proposal for the proposed fee.

Any modifications to the plans requested by the Regulatory Agencies pertaining to the infrastructure design in the previously mentioned plans, required to meet code, will be addressed by CPH as part of these services. Any modifications requested that are not code issues, or modifications requested by the CLIENT will be addressed as additional services and billed at the Standard Hourly Rates enclosed. Any other permits that may arise during the design or review process, and not outlined above, will be handled as an additional service, and billed in accordance with our Standard Hourly Rates.

5.0 CONSTRUCTION OBSERVATION

CPH proposes to conduct the minimum number of site inspections necessary to certify the on-site potable water, sanitary sewer, and landscape installation. For purposes of this proposal, no more than 6 are included within this scope. Should additional meetings, site inspections, or extension contractor coordination be required, they will be handled as additional services and billed at the Standard Hourly Rates enclosed.

B. LANDSCAPE ARCHITECTURE

1.0 LANDSCAPE DESIGN

Based upon the CLIENT approved preliminary Engineering plans; CPH will prepare a landscape plan that meets the Minimum Technical Standards of the Local jurisdiction of Nassau County. This plan will be inserted into the Construction Plans for submittal and review with the Local jurisdiction. This task does not include an irrigation plan, which will be prepared by the landscaper for review by CPH Landscape Architect. This will avoid any

conflict concerning coverage for the landscaper's plans. Should the CLIENT request a landscape plan that exceeds the minimum level required by the agencies, CPH will meet with the CLIENT to discuss the level of increase and any additional costs that may be associated with the upgrade. This task will be performed and billed as a lump sum service. Refer to the Compensation section of this proposal for the proposed fee.

2.0 IRRIGATION DESIGN

Based upon the CLIENT approved landscape plan; CPH will prepare an irrigation plan that meets the Minimum Technical Standards of the Local jurisdiction of Nassau County, and adequate for the type and quantity of plantings. This plan will be inserted into the Construction Plans for submittal and review with the Local jurisdiction. The irrigation plan identified in this proposal is for the landscape plan prepared to meet the minimum technical standards for the Local jurisdiction. Should the CLIENT choose to upgrade the landscape plan, then the proposal for the irrigation plan will have to be reviewed and adjusted for the upgraded landscape plan. This task will be performed and billed as a lump sum service. Refer to the Compensation section of this proposal for the proposed fee.

C. GEOTECHNICAL ENGINEERING

1.0 GEOTECHNICAL EXPLORATION

CPH will subconsult ECS, Florida LLC for preparation of a Geotechnical Exploration. The scope will include three 20-ft deep SPT borings within the planned building area and three 6-ft deep auger borings within planned pavement areas on the site. Selected samples obtained from the borings will be subjected to laboratory classification testing. The results of field and laboratory testing, as well as recommendations for site preparation, earthwork, and foundation support, will be presented in an electronic report.

CLIENT-FURNISHED INFORMATION

It is understood that CPH will perform services under the sole direction of the CLIENT. In the performance of these services, CPH will coordinate its efforts with those of other project team members as required. The CLIENT shall provide CPH with project-related technical data including, but not limited to, the following:

- Project size, location, identification number, and building program.
- Current title commitment and any existing boundary and topographic surveys and plats. If CPH is not performing surveying services as part of the contract, CLIENT to provide current boundary and topographic information in AutoCAD 14 or more recent version, or DXF format.
- Previous Environmental investigation reports.
- Previous Geotechnical investigation reports.
- Master plan or development plans for the overall project. Preferably in AutoCAD 14 or more recent version, or DXF format.
- Any other pertinent information concerning this project to which the CLIENT may have access.

CPH will rely upon the accuracy and completeness of CLIENT-furnished information in connection with the performance of services under this Agreement.

CPH will begin performance of the above services upon verbal authorization followed by written authorization within 7 days of the verbal authorization to proceed is received. The schedule is also subject to timely delivery of information by the CLIENT and is exclusive of CLIENT and local review of interim products. If the CLIENT requests that work under this agreement be stopped, the schedule is subject to renegotiation when written authorization to continue is received.

COMPENSATION

Labor

CPH will perform the Scope of Services contained in this Agreement as identified on each task, either lump sum or time and materials. Refer to the Standard Hourly Rate Schedule to be utilized on this project. The following is the break down of fees for each task. Tasks that are identified as Time and Materials (Hourly) have been provided an 'Upset Limit' (USL) budget. The CLIENT will be informed when the services are about to exceed this limit.

Phase No.	Phase Description	Billing Method	Fee
A. CONSULTANT			
1.0	Limited Due Diligence and Conceptual Site Plan	Lump Sum	\$2,500.51
2.0	Preliminary Design	Lump Sum	\$6,511.16
3.0	Final Design	Lump Sum	\$12,850.79
4.0	Permitting	Lump Sum	\$3,235.46
5.0	Construction Observation	Lump Sum	\$2,722.05
B. LANDSCAPE ARCHITECTURE			
1.0	Landscape Design	Lump Sum	\$4,508.63
2.0	Irrigation Design	Lump Sum	\$1,091.31
C. GEOTECHNICAL ENGINEERING			
1.0	Geotechnical Exploration	Lump Sum	\$2,900.00

SERVICES NOT INCLUDED

The following services are not anticipated and, therefore, not included in this Agreement at this time:

- Expert witness for litigation.
- Construction staking.
- Environmental studies and coordination of environmental issues with the regulatory agencies.
- Geotechnical studies and additional testing required by the regulatory agencies.
- Off-site utility analysis and design.
- Off-site storm water analysis and design.
- Expediting the review process of the permits identified herein.
- Any permits not identified herein.
- Structural Engineering design of retaining walls.
- Fire Sprinkler System design (requirements for the system will be provided by CPH).
- Bidding assistance.

- Change Order preparation.
- Pay request review
- Review of an alternative product in lieu of the product called for on the plans and specifications.
- Special meetings with agencies, other consultants or CLIENT not normally required to perform the work described in the Scope of Services, except those meetings specifically identified in the above Scope of Work
- Special requests by lending institutions or other parties not essential to completing the work described in the Scope of Services
- Permitting efforts relating to obtaining variances for the site development including tree issues, setbacks, parking, etc.
- Design of hardscape features including but not limited to structures, fountains, lighting, special paving, or signage
- Storm water modeling and/or analysis of the existing storm water pond system for retrofitting of the existing site
- Traffic studies or signalization design
- Easement or right-of-way vacation or dedication services or platting services
- Electrical, Mechanical, or Structural Engineering services
- Design and permitting of buildings and structures including bridges, retaining walls, etc.
- Design and/or permitting efforts associated with the site improvements (paving, grading, drainage, utilities, etc.) for future phases of the project
- Services resulting from changes made by CLIENT following the completion of specific project tasks that require re-work by CPH
- Wetlands Permitting
- Flood Plain Analyses
- Site Specific Maintenance of Traffic Plans
- Any other issues not specifically described in this proposal

Should work be required in any of these areas, or areas not previously described, CPH will prepare a proposal or amendment, at the CLIENT's request, that contains the Scope of Services, fee, and schedule required to complete the additional work item.

Nassau County
 Billing Hourly Rate Computation - CPH, Inc.
 SHERIFF VEHICLE STORAGE GARAGE

		SCOPE OF SERVICES HOURLY BREAKDOWN								
Classification	Billable Hourly Rate	Limited Due Diligence & Conceptual Site Plan	Preliminary Design	Final Design	Permitting	Construction Observation	Landscape Design	Irrigation Design	Total Hours Per Classification	Billable Amount Per Classification
Principal	\$198.16	1.00	2.00	4.00	1.00	1.00			9.00	\$1,783.44
Senior Project Manager	\$178.25								0.00	\$0.00
Project Manager	\$128.02	2.00	10.00	18.00	4.00	6.00			40.00	\$5,120.80
Senior Project Engineer	\$111.93								0.00	\$0.00
Project Engineer	\$86.93	14.00	24.00	43.00	20.00	16.00			117.00	\$10,170.81
Principal Environmental Scientist	\$149.32								0.00	\$0.00
Sr. Environmental Scientist	\$118.23								0.00	\$0.00
Lead Environmental Scientist	\$94.93								0.00	\$0.00
GIS Analyst	\$89.20		2.00						2.00	\$178.40
Principal Landscape Architect	\$148.95						2.00	1.00	3.00	\$446.85
Senior Landscape Architect	\$123.02						9.00	2.00	11.00	\$1,353.22
Landscape Architect	\$76.42						40.00	8.50	48.50	\$3,706.37
Senior Project Designer	\$107.90								0.00	\$0.00
Project Designer	\$97.41								0.00	\$0.00
Senior Design Technician	\$81.93	4.00	14.00	28.00					46.00	\$3,768.78
Design Technician	\$68.54	6.00	18.00	50.00	3.00				77.00	\$5,277.58
CADD Technician	\$54.84								0.00	\$0.00
Administrative	\$73.69	0.75	2.25	4.00	7.25	4.00			18.25	\$1,344.84
Clerical	\$46.75	0.75	0.50		1.00	1.50	1.00	1.00	5.75	\$268.81
Network Administration	\$109.38								0.00	\$0.00
Geotechnical Exploration (ECS Florida, LLC)										\$2,900.00
Total Hours Per Task		28.50	72.75	147.00	36.25	28.50	52.00	12.50		
Billable Amount Per Task		\$2,500.51	\$6,511.16	\$12,850.79	\$3,235.46	\$2,722.05	\$4,508.63	\$1,091.31		
GRAND TOTAL										\$36,319.91

Nassau County

Billing Hourly Rate Computation- CPH, Inc.

9/18/2017

As requested, the following is our information regarding overhead multipliers and personnel hourly rates for Nassau County.

Overall Multiplier **3.05**

Individual classification for personnel hourly rates are as follows:

Classification	Raw Hourly Rate	Overall Multiplier	Billable Hourly Rate
Principal	\$65.40	3.05	\$199.47
Senior Project Manager	\$58.83	3.05	\$179.43
Project Manager	\$42.25	3.05	\$128.86
Senior Project Engineer	\$36.94	3.05	\$112.67
Project Engineer	\$28.69	3.05	\$87.50
Principal Traffic Engineer	\$66.78	2.52	\$168.29
Traffic Analyst	\$26.44	3.05	\$80.64
Principal Environmental Scientist	\$49.28	3.05	\$150.30
Sr. Environmental Scientist	\$39.02	3.05	\$119.01
Lead Environmental Scientist	\$31.33	3.05	\$95.56
GIS Analyst	\$29.44	3.05	\$89.79
Principal Planner	\$45.68	3.05	\$139.32
Senior Planner	\$41.60	3.05	\$126.88
Planner	\$25.24	3.05	\$76.98
Principal Architect	\$60.74	3.05	\$185.26
Senior Architect	\$43.92	3.05	\$133.96
Senior Architectural Manager	\$36.03	3.05	\$109.89
Architect	\$37.25	3.05	\$113.61
Senior Architectural Designer	\$28.63	3.05	\$87.32
Architectural Designer	\$24.64	3.05	\$75.15
Interior Designer	\$27.10	3.05	\$82.66
Architectural Coordinator	\$21.37	3.05	\$65.18
Principal Structural Engineer	\$52.88	3.05	\$161.28
Senior Structural Engineer	\$43.32	3.05	\$132.13
Structural Engineer	\$28.82	3.05	\$87.90
Principal MEP Engineer	\$52.88	3.05	\$161.28
Senior MEP Project Engineer	\$38.92	3.05	\$118.71
Principal Landscape Architect	\$49.16	3.05	\$149.94
Senior Landscape Architect	\$40.60	3.05	\$123.83
Landscape Architect	\$25.22	3.05	\$76.92
Project Coordinator	\$22.57	3.05	\$68.84

Individual classification for personnel hourly rates are as follows:

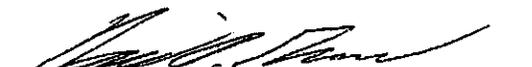
Classification	Raw Hourly Rate	Overall Multiplier	Billable Hourly Rate
Senior Project Designer	\$35.61	3.05	\$108.61
Project Designer	\$32.15	3.05	\$98.06
Senior Design Technician	\$27.04	3.05	\$82.47
Design Technician	\$22.62	3.05	\$68.99
CADD Technician	\$18.10	3.05	\$55.21
Administrative	\$24.32	3.05	\$74.18
Clerical	\$15.43	3.05	\$47.06
Network Administration	\$36.10	3.05	\$110.11
Senior Graphic Designer	\$43.27	3.05	\$131.97
Graphic Designer	\$22.02	3.05	\$67.16
Senior Construction Manager	\$35.96	3.05	\$109.68
Construction Field Rep. II	\$36.11	3.05	\$110.14
Principal Surveyor	\$50.73	3.05	\$154.73
Senior Professional Surveyor	\$38.26	3.05	\$116.69
Field Technician/Designer	\$23.27	3.05	\$70.97
Survey Project Manager/CADD	\$30.89	3.05	\$94.21
Field Crew Coordinator	\$27.30	3.05	\$83.27
Survey Party Chief	\$22.33	3.05	\$68.11
Survey Instrument Man	\$19.81	3.05	\$60.42
Senior Survey CADD Tech	\$27.52	3.05	\$83.94
Survey Crew (2 Man)	n/a	n/a	\$155.00
Survey Crew (Construction Staking - 2 Man)	n/a	n/a	\$180.00
Survey Crew (3 Man)	n/a	n/a	\$225.00
GPS (1 MAN) / Robotics	n/a	n/a	\$145.00
GPS (2 MAN)	n/a	n/a	\$180.00
1 Man Scanner Laser Survey Crew	n/a	n/a	\$265.00
2 Man Scanner Laser Survey Crew	n/a	n/a	\$290.00

* Part-time employee with no benefits.

Multiplier is 3.05 including profit.

I hereby certify that the hourly rates and multiplier are true and correct.

Approved By:


 David A. Gierach, President

9/18/17
 Date



ECS FLORIDA, LLC

"Setting the Standard for Service"

Geotechnical • Construction Materials • Environmental • Facilities

March 29, 2018

Mr. Wade Olszewski
CPH
5300 Belfort Road, Suite 200
Jacksonville, Florida 32256

Subject: Proposal for Geotechnical Exploration and Engineering Services
Storage Garage – Nassau County Sheriff
Nassau County, Florida
ECS Proposal No. 13802

Dear Mr. Olszewski:

We appreciate the opportunity to provide you with a proposal for this project and continue our relationship that we have developed over the years. We look forward to providing any geotechnical engineering and construction materials testing and environmental consulting you may need for any of your projects.

SCOPE OF WORK

We propose to advance three 20-foot deep SPT borings within the planned building area and three 6-foot deep auger borings within planned pavement areas of the site. Selected samples obtained from the borings will be subjected to laboratory classification testing. The results of our field and laboratory testing, as well as our recommendations for site preparation, earthwork, and foundation support, will be presented in an electronic report.

COMPENSATION AND AUTHORIZATION FOR PAYMENT

Based on the scope of services outlined above, we propose to provide the geotechnical and engineering services for a lump sum fee of **\$2,900**. A returned copy of the attached authorization form dated and signed by a responsible signatory will formally authorize the services identified in this proposal. Our work will be performed in accordance with our Terms and Conditions, a copy of which is attached to and made part of this proposal.

Respectfully submitted,
ECS FLORIDA, LLC

Joey Broussard, P.E.
Operations Manager

Authorization for Geotechnical Exploration and Engineering Services
Storage Garage – Nassau County Sheriff
Nassau County, Florida
ECS Proposal No. 13802

Signature of Authorized Representative: _____

Name (Printed): _____

Title: _____

Company: _____

Date Authorized: _____

Billing and Invoicing Information (if different from addressee)

Company Name: _____

Company Address: _____

Attn. (Contact's Name): _____ Email: _____

Phone No.: _____ Fax No.: _____

FEDERAL TAX ID NO. _____

Send Additional Reports To:

Company Name: _____

Company Address: _____

Attn. (Contact's Name): _____ Email: _____

Phone No.: _____ Fax No.: _____

Copies to Others (Include names and physical or e-mail addresses below):

For new clients that have not established a credit history with us, ECS may require a completed Credit Application and may require a retainer be paid prior to beginning our work.



ECS FLORIDA, LLC TERMS AND CONDITIONS OF SERVICE

The professional services ("Services") to be provided by ECS Florida, LLC ("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. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable laws or regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

4.0 CLIENT DISCLOSURES

4.1 Where the 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 the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

5.0 INFORMATION PROVIDED BY OTHERS - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S 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' 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' 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 will cause damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' 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' 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' 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' Documents of Service.
- 11.3 Without ECS' prior written consent, CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose. Any reuse without ECS' 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' 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' part time monitoring and testing in exchange for CLIENT'S receipt of an immediate cost savings. Unless the CLIENT can show that ECS' errors or omissions are contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part-time 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' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the professional fees section of the Proposal. Any estimate of

professional fees stated 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 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the scope of Services, professional fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this Agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice 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.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT 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' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to client-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT'S personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

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

18.0 LIMITATION OF LIABILITY

- 18.1 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.
- 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
- 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$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' liability for all non-professional liability arising out of this Agreement or the services provided as a result of the Proposal be limited to \$500,000.

19.0 INDEMNIFICATION

- 19.1 Subject to Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)
- 19.2 To the fullest extent permitted by law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ("Damages") caused in whole or in part by the acts, errors, or omissions of the CLIENT or CLIENT's employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages proportional to ECS' culpability. IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.
- 19.4 IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.
- 19.5 IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.

20.0 CONSEQUENTIAL DAMAGES

- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

- 21.1 All claims for damages related to the Services provided under this Agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity in any lawsuit brought under this Agreement.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 21.3 Pursuant to Fla. Stat. Sections 558.002 and 558.0035, CLIENT agrees that an individual employee or agent of ECS may not be held individually liable for negligence for acts or omissions arising out of the Services.

22.0 **THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the Agreement. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen 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 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

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

25.0 TERMINATION

- 25.1 CLIENT or ECS may terminate this Agreement for breach, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 **TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this Agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 **ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 **SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 **SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the Agreement.

30.0 TITLES: ENTIRE AGREEMENT

- 30.1 The titles used herein are for general reference only and are not part of the Terms.
- 30.2 These Terms together with the Proposal, including all exhibits, appendixes, 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.
- 30.3 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.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.