 <p>CLAYTON COUNTY <b>Water</b> AUTHORITY</p> <p>1600 Battle Creek Road Morrow, GA 30260</p>	<b>JONESBORO &amp; NOAH'S ARK RPS IMPROVEMENTS</b>	
	<b>ADDENDUM 3</b>	
	<b>Date</b>	Monday, October 2, 2023
	<b>Bid Number</b>	2023-WP-13
	<b>Pre-Bid Meeting</b>	Tuesday, September 19, 2023 at 10:00 a.m. local time
<b>Bid Opening</b>	Wednesday, October 18, 2023 at 10:00 a.m. local time	
<b>ADDENDUM MUST BE SIGNED AND INCLUDED IN YOUR BID SUBMITTAL</b>		

**SECTION 00 91 13.03**  
**ADDENDUM 3**

**PART 1 – REVISIONS TO THE PROJECT MANUAL**

The following REVISIONS shall be incorporated into the PROJECT MANUAL for the above-referenced project:

- A. Section 40 05 64 – High Performance Butterfly Valves
  - 1. Part 2.01-F, revised as follows: “All external and internal surfaces **with** exception of stainless steel and finished or bearing surfaces shall be **coated with fusion bonded epoxy heat bonded fusion epoxy coated. Valves too large to be heat bonded fusion coated shall be shop painted with two coats** (10 mils min. dry film thickness) of the manufacturer’s premium epoxy for corrosion resistance.”
  - 2. Part 2.01-M, revised as follows: “All butterfly valves **installed above ground and** larger than 6-inch diameter shall be equipped with safety locking device to ensure valve disc stays in the closed position. The valve shall have an externally lockable disc in the closed position. The disc shall remain in the zero-leak sealed closed position even if the entire actuator is removed for safety or maintenance. The locking device shall be handwheel operated, pad lockable, and suitable for lockout/tag out safety procedures. A mechanical position indicator shall be provided for each locking device to show its position: either open (completely out of the valve, allowing the disc to move) or closed (fully inserted in the valve body, preventing the disc from moving).”

**All other terms and conditions of the PROJECT MANUAL remain unchanged.**

**PART 2 – REVISIONS TO THE DRAWINGS**

The following REVISIONS shall be incorporated into the DRAWINGS for the above-referenced project:

- A. Drawing C012 – See Attachment C
- B. Drawing C053 – See Attachment A

**All other terms and conditions of the DRAWINGS remain unchanged.**

### **PART 3 – QUESTIONS AND ANSWERS**

**Q1: Section 40 05 64 – High Performance Butterfly Valves, Paragraph 2.01–F calls for valves to be Fusion bonded epoxy unless the manufacturer deems the valves to be too large for fusion bonded epoxy in which case, they can then use a 2-part epoxy. Can you remove the 2-part epoxy from the specification as all of these valves are within the size range of utilizing a fusion bonded epoxy?**

A1: See Part 1-A of this Addendum for revisions to Section 40 05 64 – High Performance Butterfly Valves.

**Q2: Section 40 05 64 – High Performance Butterfly Valves, Section 2.01–M calls for all valves larger than 6-inches to have a safety locking device. Can you confirm if this is a requirement for this project and if it is which valves are supposed to have this safety lock device as we do not typically see them on buried service valves?**

A2: The locking device shall be required for valves located above ground and shall not be required for buried service valves. See Part 1-A of this Addendum for revisions to Section 40 05 64 – High Performance Butterfly Valves.

**Q3: Drawing C010 and C050 states “CUT, CAP, AND ABANDON EX GAS LINE”. Please provide the pipe material, diameter and elevation.**

A3: Gas service line material, diameter and elevation are unknown for both locations.

**Q4: On Drawing C010 & C050, please provide the existing duct bank dimensions needing to be removed.**

A4: Dimensional information for underground conduits and duct banks is unknown and will have to be assumed from the indicated applications. Record Drawings indicate that the service conduits from the Georgia Power Company transformers include the following conduits/feeders: Jonesboro = 6 x (4”C, 3-750kcmil, 1#4/0G); Noah’s Ark 1 = 4 x (4”C, 3-750kcmil, 1#4/0G); Noah’s Ark 2 = 8 x (4”C, 3-500kcmil, 1#4/0G).

**Q5: On Drawing C010 & C015, please provide the elevations for the 16”, 24” & 30” valves needing to be replaced.**

A5: C/L elevations of the referenced valves are unknown.

**Q6: Specification 05 56 00 calls for Iron Castings; please indicate where the Iron Castings are located in the drawings.**

A6: Section 05 56 00 – Castings was included in the Specifications because it is referenced by other Specifications.

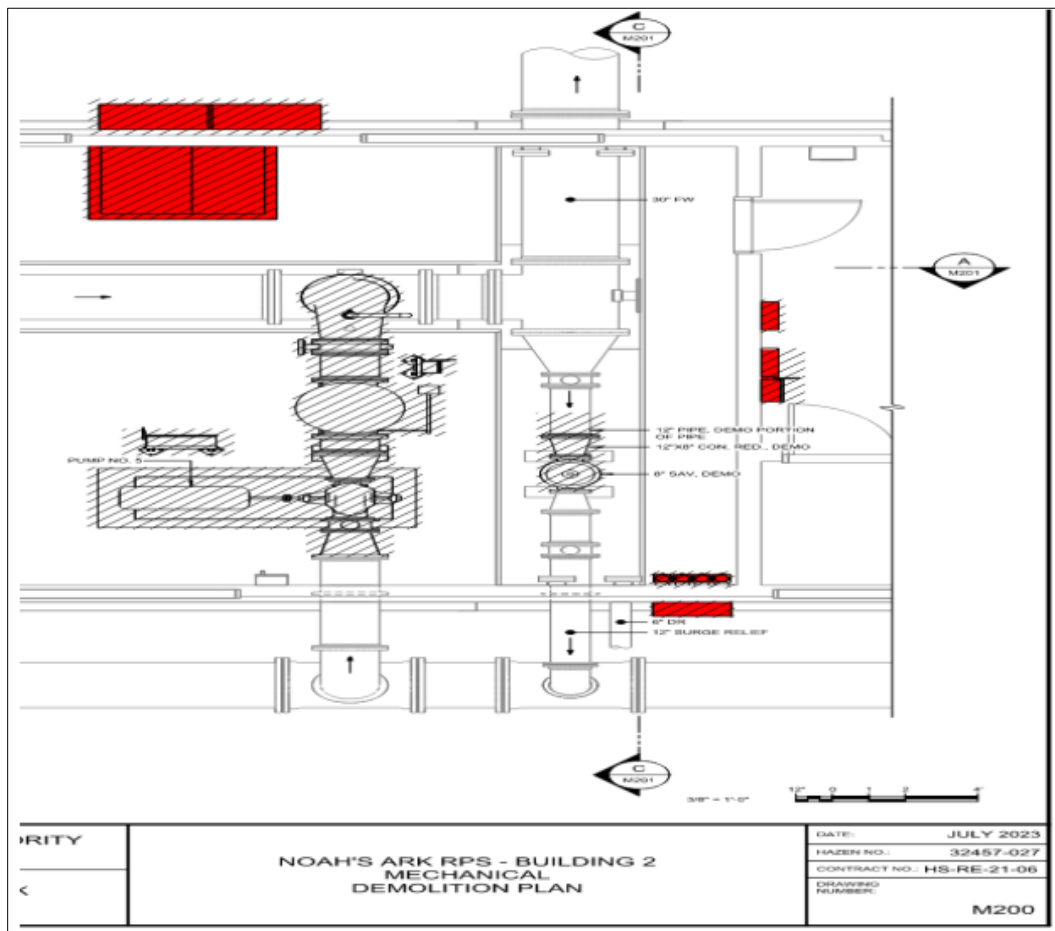
**Q7:** Drawing C011 indicates a 30" BFV to be replaced while on drawing C016 the same valve is shown as 36" BFV-010C. Please confirm the valve diameter.

A7: The existing valve size is 36-inches. Contractor shall verify all existing yard valve sizes prior to ordering replacement valves.

**Q8:** Drawing M104 Note 1: "...FROM TAP TO 12-INCH SURGE ANTICIPATOR VALVE PER MANUFACTURER'S GUIDELINES." The SAV valve shown on Section F is 6-inches. Please confirm the valve size.

A8: The proposed SAV shall match the existing SAV size which is 6-inches.

**Q9:** Highlighted items in red below on Drawing M200 are indicated to be demolished. The drawing did not indicate what these items are. Please add more definitions and labels for the highlighted items.



A9: See the E-Drawings for labels and definition of the red-highlighted demolition items.

**Q10:** Please clarify if this project requires AIS (American Iron and Steel act) requirements.

A10: The Bid Documents do not include an "American Iron and Steel" requirement.

**Q11: At the Prebid Meeting, it was mentioned that some of the existing valves could not hold pressure, requiring a shutdown that would affect the surrounding neighborhoods. Please clarify which valves that may affect the work of this project are known to not hold pressure, and which valves whose operation are unknown.**

A11: The discussion referenced in Q11 involved a yard valve that is currently being replaced by CCWA and is not applicable to the proposed work indicated in the Bid Documents.

**Q12: Drawing C053 Note 3: "CONTRACTOR SHALL TEMPORARILY REMOVE DOUBLE CHECK VALVE (DCV), BOX, AND SAMPLE STATION TO PERFORM VALVE INSTALLATION..." Please provide drawings showing the location of the DCV and sample station.**

A12: Callouts identifying the sample stations' and DCVs' location have been added to Drawing C053. See Drawing C053 Exhibit in the attachments.

**Q13: Drawing C050: Please provide the elevations for the 24" valves needing to be replaced.**

A13: Depth to the existing valves to be replaced has not been determined. Per Jonesboro RPS construction drawings (1991, Robert and Company), C/L elevation of existing valves identified to be replaced on the east side of Jonesboro RPS (BFV-400A, BFV-400B, BFV-400C, BFV-400D) is  $\pm 933'$ . For the existing valve identified to be replaced on the west side of Jonesboro RPS (BFV-400E), the C/L elevation is  $\pm 936'$ .

**Q14: Drawing C050 stated "DEMO EX TOWER" Please provide more details and drawings for the existing tower needing to be removed.**

A14: Construction drawings for the existing tower are not available. Picture of tower is included as an attachment.

**Q15: Drawing C010 stated "REMOVE EX FENCE GATE" while drawing C012 did not mention to add a new gate. Please clarify if we need to add a new gate or not.**

A15: The existing gate shall be replaced with proposed fencing matching the existing fencing. No new gate will be added at this location. See Drawing C012 Exhibit in the attachments.

**Q16: Please provide copies of the asbestos and lead based paint surveys referenced in Section 00 73 00 – Supplementary Conditions.**

A16: The asbestos and lead based paint survey reports are attached to this addendum.

#### **PART 4 – ATTACHMENTS**

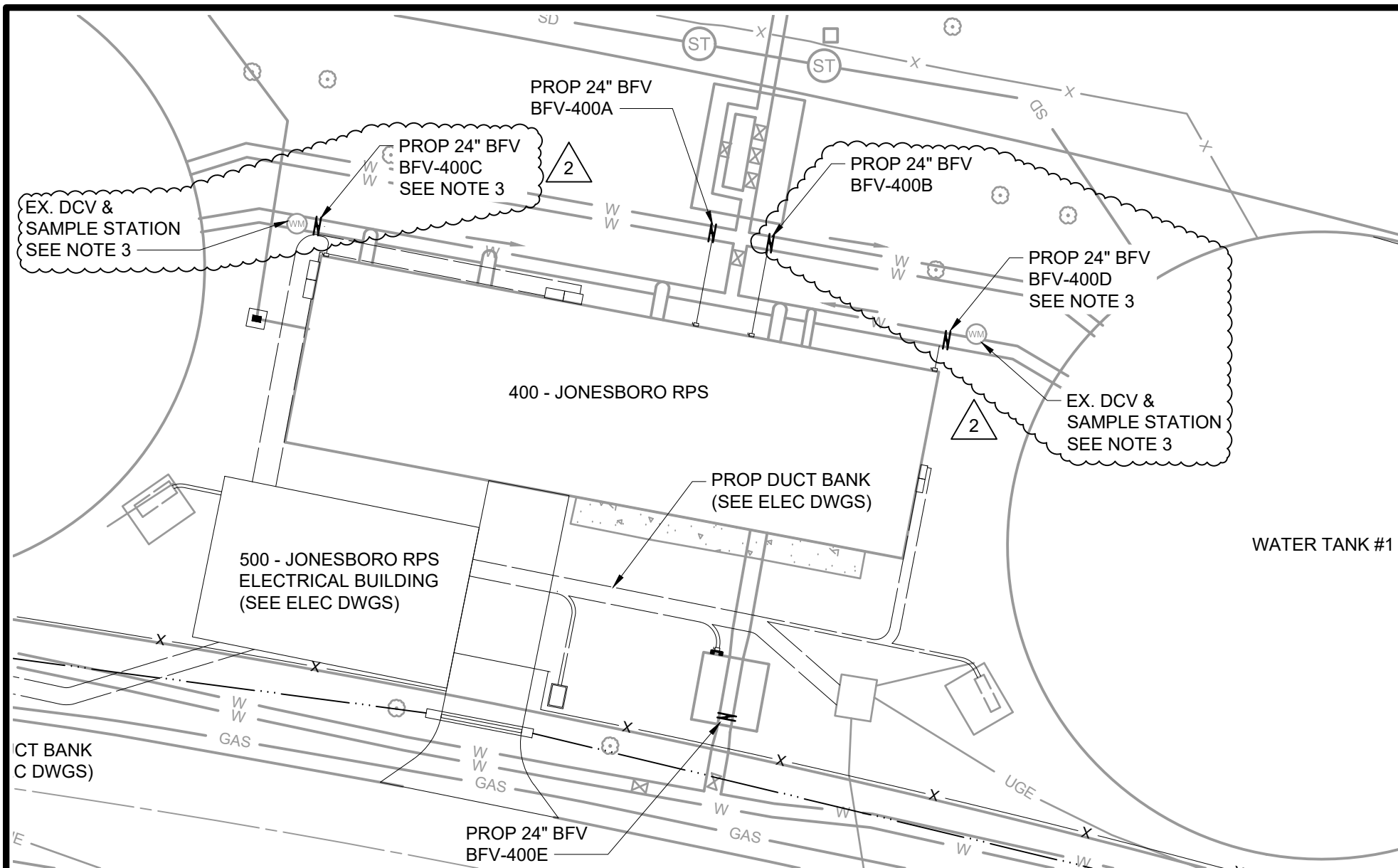
A. Drawing C053 Exhibit.

B. Jonesboro RPS Antenna picture.

- C. Drawing C012 Exhibit.
- D. Asbestos and Lead Based Paint Survey for Noah's Ark RPS, ECS Southeast, LLP, November 2022.
- E. Asbestos and Lead Based Paint Survey for Jonesboro RPS, ECS Southeast, LLP, November 2022.

**END OF SECTION**

<b>Acknowledgment of receipt of this addendum must be signed and included in your bid submittal.</b>	
<b>Company Name</b>	
<b>Signature</b>	
<b>Date</b>	



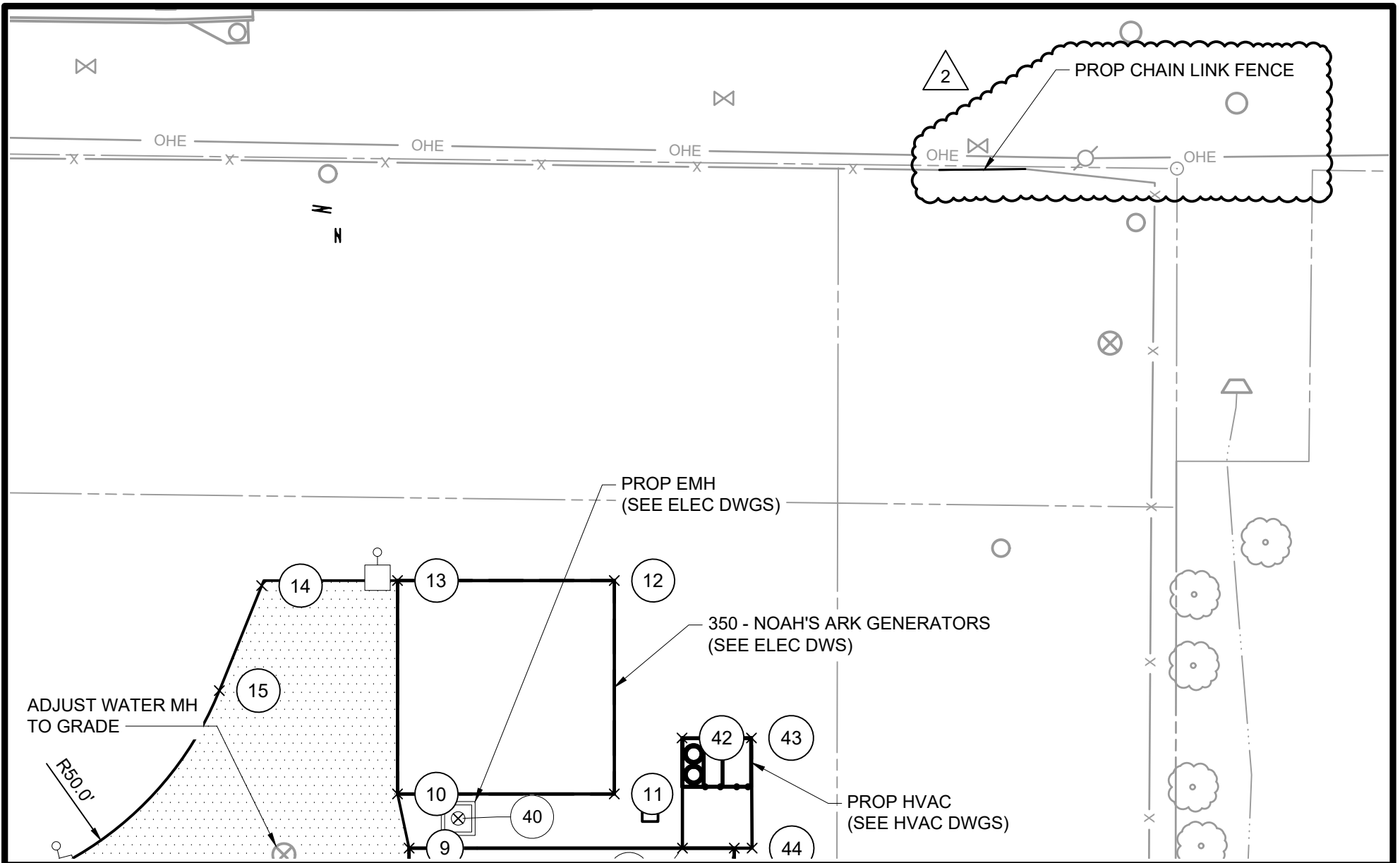
ADDENDUM NO. 3	DATE 2023.0928	CLAYTON COUNTY WATER AUTHORITY CLAYTON, GA	HAZEN JOB NUMBER 32457-027	REFER TO CONTRACT DRAWING NUMBER C053
ATTACHMENT NO. A	BY BCJ		JONESBORO AND NOAH'S ARK RPS IMPROVEMENTS	CONTRACT NUMBER 2023-WP-13



Jonesboro RPS Antenna







ADDENDUM NO. 3	DATE 2023.0928	CLAYTON COUNTY WATER AUTHORITY CLAYTON, GA	HAZEN JOB NUMBER 32457-027	REFER TO CONTRACT DRAWING NUMBER C012
ATTACHMENT NO. C	BY BCJ	JONESBORO AND NOAH'S ARK RPS IMPROVEMENTS	CONTRACT NUMBER 2023-WP-13	SHEET 1 OF 1





# **ECS Southeast, LLP**

Proposal for Asbestos and Lead Based Paint Survey

Noah's Ark RSP  
1865 Noah's Ark Road, Jonesboro, Georgia 30236

For: Hazen and Sawyer  
1300 Almore Avenue, Suite D-520, Atlanta, Georgia 30342

ECS Proposal Number 49:33782P  
September 21, 2022





September 21, 2022

Mr. Chas Goblisch  
Hazen and Sawyer  
1300 Altmore Avenue  
Suite D-520  
Atlanta, Georgia 30342

ECS Proposal No. 49:33782P

Reference: Proposal for Asbestos and Lead Based Paint Survey, Noah's Ark RSP, 1865 Noah's Ark Road, Jonesboro, Georgia

Dear Mr. Goblisch:

ECS Southeast, LLP (ECS) is pleased to provide Hazen and Sawyer with this proposal for performing an Asbestos and Lead Based Paint Survey for the Noah's Ark RSP project. Our proposal contains a summary of relevant information as we understand it, a project schedule, and the estimated fees for completion of the proposed services.

We understand the property is located at 1865 Noah's Ark Road in Jonesboro, Clayton County, Georgia. Based on the information available, a property description is noted within the attached proposal along with a description of our scope of services.

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

Sincerely,

ECS Southeast, LLP

Jenny Clark, REM  
Environmental Department Manager  
jclark@ecslimited.com  
404-640-9257

Lindsey Lucas, REM  
Environmental Principal  
llucas1@ecslimited.com  
864-345-0809

## PROJECT INFORMATION AND SCOPE OF SERVICES

### Project Description

We understand the property is developed with a water treatment facility located at 1865 Noah's Ark Road in Jonesboro, Clayton County, Georgia. Based on the information available, the two pumps station buildings consist of approximately 5,800 square feet of space in total. The buildings were reportedly constructed in 1974 and 1996. ECS understands the buildings are scheduled for demolition.

### Purpose and Project Background

The purpose of this Asbestos and Lead Based Paint Survey is to evaluate if asbestos-containing materials (ACMs) and lead-based paint (LBP) are present within the buildings prior to the planned demolition activities.

### SCOPE OF SERVICES

Based on our understanding of the subject property and plans for future activities ECS has prepared the following Scope of Services.

### Asbestos-Containing Materials

The non-invasive survey will target accessible portions of the subject building including interior and exterior areas, including the roofing systems. The survey at this time does not include destructive testing that may require access within wall, ceiling, or floor cavities to access hidden materials. A follow-up demolition scope survey may be needed once the buildings are vacant if they are not vacant at the time of the survey. ECS will rely on Hazen and Sawyer to provide access to the subject property.

The asbestos survey will be conducted by an inspector who has received United States Environmental Protection Agency (US EPA) accredited training to identify and sample suspect asbestos-containing materials (ACMs) in general accordance with US EPA Asbestos Hazard Emergency Response Act (AHERA) Regulations (40 Code of Federal Regulation (CFR) 763 Subpart E), Occupational Safety and Health Administration (OSHA) Standard 29 CFR 1926.1101 Inspection Protocol, and ASTM E2356-18 Standard Practice for Comprehensive Building Asbestos Surveys. The survey includes the collection of bulk samples of friable (easily crumbled under hand pressure) and non-friable materials suspected as containing asbestos for laboratory testing.

The number of samples collected will be determined using the following criteria:

- Thermal Insulation Materials (piping, breeching, boiler insulation, etc.) - A minimum of three (3) samples will be collected. Only one (1) sample will be collected from patch areas that are less than 6 square or linear feet in size.
- Surfacing Materials (plaster, fireproofing, etc.) – A minimum of seven (7) samples will be collected for areas greater than 5,000 square feet; five (5) samples collected for areas greater than 1,000 square feet, but less than 5,000 square feet; and three (3) samples collected for areas less than 1,000 square feet.

- Miscellaneous Materials (flooring, adhesives, roofing, wallboard, etc.) – A minimum of two (2) samples are required.

At the discretion of the ECS inspector, samples may be analyzed using “Positive Stop” methodology. This methodology states if one sample of a homogeneous material is found to contain asbestos, the remaining samples of that material are not analyzed. EPA regulations stipulate that if one sample contains asbestos the entire quantity of that material contains asbestos, regardless of additional analysis.

Samples collected during the survey will be submitted to an independent laboratory for analysis by polarized light microscopy (PLM) in accordance with EPA testing methods. The laboratory selected by ECS for the project will be accredited by the U.S. Department of Commerce, National Institute of Standards and Technologies, National Voluntary Laboratory Accreditation Program (NVLAP) for PLM analysis.

### **Lead in Paint and Other Surface Coatings**

ECS will perform the lead survey in general accordance with the U.S. Department of Housing and Urban Development (HUD) “Guidelines for the Evaluation and Control of Lead-Based Paint Hazard in Housing.” ECS will perform testing for components and substrates encountered within the accessible areas, however, the scope of this study is not intended to meet the requirements for a surface-by-surface investigation per HUD Chapter 7 guidelines and for lead free certification purposes, but rather a screening survey of painted surfaces where the presence of lead-based paint is suspected for environmental due diligence.

Testing to determine the lead concentration of painted surfaces will be performed using an x-ray fluorescence (XRF) spectrum analyzer. The XRF is a hand-held portable lead detector, designed to obtain accurate, non-destructive measurements of lead concentrations in paints and coatings. The results of the testing will identify the concentration of lead within representative painted and glazed surfaces.

### **OUT OF SCOPE OBSERVATIONS**

If during the performance of our Scope of Services additional environmental issues are observed which are beyond the Scope of Services outlined within this proposal, ECS may contact Hazen and Sawyer to discuss the relevance and significance of the observation in order to determine if the observation requires additional assessment, inclusion in our final report, or a modification to our Scope of Services and fee.

### **SAFETY**

ECS personnel are responsible for their own personal safety. While on site, if ECS personnel deem a condition is unsafe and the performance of our Scope of Services cannot be completed, you will be notified of the unsafe condition. ECS personnel will not proceed further with the Scope of services in that area until the unsafe condition is corrected.



## REPORTS AND MEETINGS

ECS will prepare one Asbestos and Lead-Based Paint Survey report for the subject property. A copy of the report will be forwarded electronically upon completion of the project and will include a project background, sampling methodologies, laboratory results, photographs and our conclusions. Hard copies of the report can be provided at cost. Meetings requested by Hazen and Sawyer (both on site and at ECS's office beyond the Scope of Services outlined above) will be invoiced on a time and materials basis.

Our final report is not intended to be relied upon for Contractor bidding purposes. An Asbestos Abatement Specification can be generated following the completion of this survey under a separate proposal if needed.

## PROJECT FEES AND SCHEDULE

### Project Fees

The estimated fee to perform the proposed tasks is provided on Table 1. Our estimate is based on experience with similar projects. ECS performs consulting services on a unit rate basis. This estimate is based on our best estimate of the time required to complete the task. Any additional time and/or laboratory testing above the costs estimated in Table 1 will be billed in accordance with our standard unit rates.

Submitted charges for work are based on the number of units of work actually performed. If unusual conditions are encountered that could affect the performance of the project, we would notify you immediately, so that appropriate changes could be made to the Scope of Services and the fee estimate adjusted accordingly, if necessary. It should be noted that meetings and consultation provided at the request of the client, and beyond the scope of this proposal, will be billed in accordance with ECS's standard fee schedule.

<b>Table 1 - Total Estimated Fees</b>			
<b>Task/Item</b>	<b>Unit Rate</b>	<b>No. of Units</b>	<b>Fee</b>
Site Visit, Field Work and Final Report	Lump Sum	1	\$2,500.00
PLM Bulk Sample Analysis (only invoiced for samples analyzed)	\$8.00/layer (7-day turnaround)	55 - Estimated*	\$440.00
PLM Point Count (EPA 600/R-93/116 400 Point)	\$32.00/each (7-day turnaround)	10 - Estimated*	\$320.00
XRF Rental	\$500.00/day	1 day	\$500.00
<b>Total Estimated Fee for Proposed Scope of Services:</b>			<b>\$3,760.00</b>
* Sample quantities are estimated. If additional samples are required, ECS will invoice at the rates and turnaround time identified above.			

**Project Schedule**

The fieldwork will be coordinated with you and will take approximately one day to complete. Laboratory analysis will take approximately seven days to complete and begins when the samples are received and logged in by the laboratory. The report will be issued within one to two weeks of receipt of the final laboratory report.

If areas of the property cannot be observed due to inaccessibility or unsafe conditions beyond the control of ECS, ECS will wait until such time either that the area is accessible or the unsafe conditions are corrected. If ECS must make an additional visit to the site, a change order will be provided for our additional fees.

If other items are required because of unexpected field conditions encountered in our fieldwork, or because of a request for additional services, they would be invoiced in accordance with our current Fee Schedule. Before modifying or expanding our scope of services, you would be informed of our intentions for both your review and authorization.

An escort is requested, for the time that we are present on the site, for entrance to interior portions of the buildings.

**LIMITATIONS**

Conclusions and recommendations pertaining to environmental conditions at the subject site are limited to the conditions observed and the materials sampled at the time this study will be undertaken. The survey is not intended to represent an exhaustive research of every potential hazard or condition that may exist, nor does it claim to represent conditions or events that arise after the survey. The sampling results only represent the locations at the time and day of collection.

**PROPOSAL ACCEPTANCE**

Please complete the following Proposal Acceptance form and return to ECS to indicate acceptance of this proposal and to initiate services on the referenced project. The Client's below signature indicates that he/she has read or has had the opportunity to read the accompanying Terms and Conditions of Service and agrees to be fully bound by such Terms and Conditions of Service.

<b>PROPOSAL INFORMATION</b>	
ECS Proposal Number	49:33782P
Location	1865 Noah's Ark Road, Jonesboro, Georgia
<b>CLIENT INFORMATION</b>	
Signature - Authorized Representative for Entity Responsible for Payment	
Print or Type Name of Client and Company	
Date of Execution	



Proposal Addressee - Name	Mr. Chas Goblisch
Proposal Addressee - Company	Hazen and Sawyer

<b>INVOICE INFORMATION</b>	
<b>Please Print Below if Invoice Addressee is Different or Special Invoicing Instructions</b>	
Invoice Addressee - Name	
Invoice Addressee - Company	
Invoice Addressee - Street Address	
Invoice Addressee - Street Address	
Invoice Addressee - City, State, Zip	
Invoice Addressee - Email	
Invoice Addressee - Phone Number	
Purchase Order Number	
Client Project/Account Number	
Pay Application Required	

**TERMS AND CONDITIONS**

Attached to this proposal and an integral part of our proposal, are our "Terms and Conditions of Service". These terms and conditions represent the current recommendations of the Geoprofessional Business Association (GBA), the Consulting Engineers' Council, and the Geotechnical Division of the American Society of Civil Engineers.

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





## ECS SOUTHEAST LLP TERMS AND CONDITIONS OF SERVICE

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

**1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Services on the Project and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

**2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S agents, contractors and consultants ("Contractors"). CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

### **3.0 STANDARD OF CARE**

**3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guarantee of any nature whatsoever.**

**3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

**3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' 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 any additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

**5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S Contractors, including such information that becomes incorporated into ECS documents.

**6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. CLIENT agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' 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 may 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 Charged Condition(s), ECS shall notify the CLIENT of the Charged 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 disproportional to ECS' culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**
- 19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**
- 19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this Agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 22.0 THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the Agreement. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen 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, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the Agreement.
- 30.0 TITLES; ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms.
- 30.2 These Terms together with the Proposal, including all exhibits, appendices, and other documents appended to it, constitute the entire agreement between CLIENT and ECS ("Agreement"). CLIENT acknowledges that all prior understandings and negotiations are superseded by this Agreement.
- 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.
- 30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and these Terms and their agreement to be fully bound to them. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.



# **ECS Southeast, LLP**

Proposal for Asbestos and Lead-Based Paint Survey

Jonesboro RSP  
7700 Old Morrow Road, Jonesboro, Georgia 30236

For: Hazen and Sawyer  
1300 Almore Avenue, Suite D-520, Atlanta, Georgia 30342

ECS Proposal Number 49:33783P  
September 21, 2022





September 21, 2022

Mr. Chas Goblisch  
Hazen and Sawyer  
1300 Altmore Avenue  
Suite D-520  
Atlanta, Georgia 30342

ECS Proposal No. 49:33783P

Reference: Proposal for Asbestos and Lead-Based Paint Survey, Jonesboro RSP, 7700 Old Morrow Road, Jonesboro, Georgia

Dear Mr. Goblisch:

ECS Southeast, LLP (ECS) is pleased to provide Hazen and Sawyer with this proposal for performing an Asbestos and Lead-Based Paint Survey for the Jonesboro RSP project. Our proposal contains a summary of relevant information as we understand it, a project schedule, and the estimated fees for completion of the proposed services.

We understand the property is located at 7700 Old Morrow Road in Jonesboro, Clayton County, Georgia. Based on the information available, a property description is noted within the attached proposal along with a description of our scope of services.

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

Sincerely,

ECS Southeast, LLP

Jenny Clark, REM  
Environmental Department Manager  
jclark@ecslimited.com  
404-640-9257

Lindsey Lucas, REM  
Environmental Principal  
llucas1@ecslimited.com  
864-345-0809



## PROJECT INFORMATION AND SCOPE OF SERVICES

### Project Description

We understand the property is developed with a water treatment facility located at 7700 Old Morrow Road in Jonesboro, Clayton County, Georgia. Based on the information available, the pump station building consists of approximately 2,800 square feet of space and was reportedly constructed in 1991. ECS understands the building is scheduled for demolition.

### Purpose and Project Background

The purpose of this Asbestos and Lead-Based Paint Survey is to evaluate if asbestos-containing materials (ACMs) and lead-based paint (LBP) are present within the building prior to the planned demolition activities.

### SCOPE OF SERVICES

Based on our understanding of the subject property and plans for future activities ECS has prepared the following Scope of Services.

### Asbestos-Containing Materials

The non-invasive survey will target accessible portions of the subject building including interior and exterior areas, including the roofing systems. The survey at this time does not include destructive testing that may require access within wall, ceiling, or floor cavities to access hidden materials. A follow-up demolition scope survey may be needed once the building is vacant. ECS will rely on Hazen and Sawyer to provide access to the subject property.

The asbestos survey will be conducted by an inspector who has received United States Environmental Protection Agency (US EPA) accredited training to identify and sample suspect asbestos-containing materials (ACMs) in general accordance with US EPA Asbestos Hazard Emergency Response Act (AHERA) Regulations (40 Code of Federal Regulation (CFR) 763 Subpart E), Occupational Safety and Health Administration (OSHA) Standard 29 CFR 1926.1101 Inspection Protocol, and ASTM E2356-18 Standard Practice for Comprehensive Building Asbestos Surveys. The survey includes the collection of bulk samples of friable (easily crumbled under hand pressure) and non-friable materials suspected as containing asbestos for laboratory testing.

The number of samples collected will be determined using the following criteria:

- Thermal Insulation Materials (piping, breeching, boiler insulation, etc.) - A minimum of three (3) samples will be collected. Only one (1) sample will be collected from patch areas that are less than 6 square or linear feet in size.
- Surfacing Materials (plaster, fireproofing, etc.) – A minimum of seven (7) samples will be collected for areas greater than 5,000 square feet; five (5) samples collected for areas greater than 1,000 square feet, but less than 5,000 square feet; and three (3) samples collected for areas less than 1,000 square feet.
- Miscellaneous Materials (flooring, adhesives, roofing, wallboard, etc.) – A minimum of two (2) samples are required.

At the discretion of the ECS inspector, samples may be analyzed using "Positive Stop" methodology. This methodology states if one sample of a homogeneous material is found to contain asbestos, the remaining samples of that material are not analyzed. EPA regulations stipulate that if one sample contains asbestos the entire quantity of that material contains asbestos, regardless of additional analysis.

Samples collected during the survey will be submitted to an independent laboratory for analysis by polarized light microscopy (PLM) in accordance with EPA testing methods. The laboratory selected by ECS for the project will be accredited by the U.S. Department of Commerce, National Institute of Standards and Technologies, National Voluntary Laboratory Accreditation Program (NVLAP) for PLM analysis.

### **Lead in Paint and Other Surface Coatings**

ECS will perform the lead survey in general accordance with the U.S. Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazard in Housing." ECS will perform testing for components and substrates encountered within the accessible areas, however, the scope of this study is not intended to meet the requirements for a surface-by-surface investigation per HUD Chapter 7 guidelines and for lead free certification purposes, but rather a screening survey of painted surfaces where the presence of lead-based paint is suspected for environmental due diligence.

Testing to determine the lead concentration of painted surfaces will be performed using an x-ray fluorescence (XRF) spectrum analyzer. The XRF is a hand-held portable lead detector, designed to obtain accurate, non-destructive measurements of lead concentrations in paints and coatings. The results of the testing will identify the concentration of lead within representative painted and glazed surfaces.

### **OUT OF SCOPE OBSERVATIONS**

If during the performance of our Scope of Services additional environmental issues are observed which are beyond the Scope of Services outlined within this proposal, ECS may contact Hazen and Sawyer to discuss the relevance and significance of the observation in order to determine if the observation requires additional assessment, inclusion in our final report, or a modification to our Scope of Services and fee.

### **SAFETY**

ECS personnel are responsible for their own personal safety. While on site, if ECS personnel deem a condition is unsafe and the performance of our Scope of Services cannot be completed, you will be notified of the unsafe condition. ECS personnel will not proceed further with the Scope of services in that area until the unsafe condition is corrected.

### **REPORTS AND MEETINGS**

ECS will prepare one Asbestos and Lead-Based Paint Survey report for the subject property. A copy of the report will be forwarded electronically upon completion of the project and will include a project background, sampling methodologies, laboratory results, photographs and our conclusions. Hard

copies of the report can be provided at cost. Meetings requested by Hazen and Sawyer (both on site and at ECS's office beyond the Scope of Services outlined above) will be invoiced on a time and materials basis.

Our final report is not intended to be relied upon for Contractor bidding purposes. An Asbestos Abatement Specification can be generated following the completion of this survey under a separate proposal.

**PROJECT FEES AND SCHEDULE**

**Project Fees**

The estimated fee to perform the proposed tasks is provided on Table 1. Our estimate is based on experience with similar projects. ECS performs consulting services on a unit rate basis. This estimate is based on our best estimate of the time required to complete the task. Any additional time and/or laboratory testing above the costs estimated in Table 1 will be billed in accordance with our standard unit rates.

Submitted charges for work are based on the number of units of work actually performed. If unusual conditions are encountered that could affect the performance of the project, we would notify you immediately, so that appropriate changes could be made to the Scope of Services and the fee estimate adjusted accordingly, if necessary. It should be noted that meetings and consultation provided at the request of the client, and beyond the scope of this proposal, will be billed in accordance with ECS's standard fee schedule.

<b>Table 1 - Total Estimated Fees</b>			
<b>Task/Item</b>	<b>Unit Rate</b>	<b>No. of Units</b>	<b>Fee</b>
Site Visit, Field Work and Final Report	Lump Sum	1	\$2,200.00
PLM Bulk Sample Analysis (only invoiced for samples analyzed)	\$8.00/layer (7-day turnaround)	28 - Estimated*	\$224.00
PLM Point Count (EPA 600/R-93/116 400 Point)	\$32.00/each (7-day turnaround)	10 - Estimated*	\$320.00
XRF Rental	\$500.00/day	1 day	\$500.00
<b>Total Estimated Fee for Proposed Scope of Services:</b>			<b>\$3,244.00</b>
* Sample quantities are estimated. If additional samples are required, ECS will invoice at the rates and turnaround time identified above.			



**Project Schedule**

The fieldwork will be coordinated with you and will take approximately one day to complete. Laboratory analysis will take approximately seven days to complete and begins when the samples are received and logged in by the laboratory. The report will be issued within one to two weeks of receipt of the final laboratory report.

If areas of the property cannot be observed due to inaccessibility or unsafe conditions beyond the control of ECS, ECS will wait until such time either that the area is accessible or the unsafe conditions are corrected. If ECS must make an additional visit to the site, a change order will be provided for our additional fees.

If other items are required because of unexpected field conditions encountered in our fieldwork, or because of a request for additional services, they would be invoiced in accordance with our current Fee Schedule. Before modifying or expanding our scope of services, you would be informed of our intentions for both your review and authorization.

An escort is requested, for the time that we are present on the site, for entrance to interior portions of the building.

**LIMITATIONS**

Conclusions, and recommendations pertaining to environmental conditions at the subject site are limited to the conditions observed, and the materials sampled at the time this study will be undertaken. The survey is not intended to represent an exhaustive research of every potential hazard or condition that may exist, nor does it claim to represent conditions or events that arise after the survey. The sampling results only represent the locations at the time, and day of collection.

**PROPOSAL ACCEPTANCE**

Please complete the following Proposal Acceptance form and return to ECS to indicate acceptance of this proposal and to initiate services on the referenced project. The Client's below signature indicates that he/she has read or has had the opportunity to read the accompanying Terms and Conditions of Service and agrees to be fully bound by such Terms and Conditions of Service.

<b>PROPOSAL INFORMATION</b>	
ECS Proposal Number	49:33783P
Location	7700 Old Morrow Road, Jonesboro, Georgia
<b>CLIENT INFORMATION</b>	
Signature - Authorized Representative for Entity Responsible for Payment	
Print or Type Name of Client and Company	
Date of Execution	



Proposal Addressee - Name	Mr. Chas Goblisch
Proposal Addressee - Company	Hazen and Sawyer

<b>INVOICE INFORMATION</b>	
<b>Please Print Below if Invoice Addressee is Different or Special Invoicing Instructions</b>	
Invoice Addressee - Name	
Invoice Addressee - Company	
Invoice Addressee - Street Address	
Invoice Addressee - Street Address	
Invoice Addressee - City, State, Zip	
Invoice Addressee - Email	
Invoice Addressee - Phone Number	
Purchase Order Number	
Client Project/Account Number	
Pay Application Required	

**TERMS AND CONDITIONS**

Attached to this proposal and an integral part of our proposal, are our "Terms and Conditions of Service". These terms and conditions represent the current recommendations of the Geoprofessional Business Association (GBA), the Consulting Engineers' Council, and the Geotechnical Division of the American Society of Civil Engineers.

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





## ECS SOUTHEAST LLP TERMS AND CONDITIONS OF SERVICE

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

**1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Services on the Project and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

**2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S agents, contractors and consultants ("Contractors"). CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

### **3.0 STANDARD OF CARE**

**3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guarantee of any nature whatsoever.**

**3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

**3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' 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 any additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

**5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S Contractors, including such information that becomes incorporated into ECS documents.

**6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. CLIENT agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' 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 may 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 Charged Condition(s), ECS shall notify the CLIENT of the Charged 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 disproportional to ECS' culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**
- 19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**
- 19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this Agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 22.0 THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the Agreement. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen 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, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the Agreement.
- 30.0 TITLES; ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms.
- 30.2 These Terms together with the Proposal, including all exhibits, appendices, and other documents appended to it, constitute the entire agreement between CLIENT and ECS ("Agreement"). CLIENT acknowledges that all prior understandings and negotiations are superseded by this Agreement.
- 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.
- 30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and these Terms and their agreement to be fully bound to them. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.