

# REQUEST FOR PURCHASE IN EXCESS OF \$20,000/CHANGE ORDER



**To:** Members of the Edina Housing & Redevelopment Authority

**Agenda Item #:** HRA VI

**From:** Bill Neuendorf  
Economic Development Manager

**The Recommended Bid is**

Within Budget

Not Within Budget

**Date:** September 3, 2013

**Subject:** Environmental Studies for 5146 Eden Avenue

**Date Bid Opened or Quote Received:**  
August 20, 2013

**Bid or Expiration Date:**  
NA

**Company:**  
Braun Intertec Corporation

**Amount of Quote or Bid:**  
\$37,955.10

## **Recommended Quote or Bid:**

Authorization for the Chair and Executive Director to execute the revised scope of services with Braun Intertec and to apply for potential reimbursement through the MN Petro-Fund.

## **General Information:**

The HRA engaged Braun Intertec to conduct a Phase I environmental assessment of the former Public Works site prior to demolition. During the demolition, Braun was also tasked with monitoring soil conditions for signs of contamination. The cost of this original work was \$16,950.00.

During the demolition process, environmental contamination (petroleum products and hydraulic fluid) was discovered. This was documented as Leak # 19190. In order to complete the professional services and secure approvals from the MPCA, it will be necessary to expand Braun's scope of work. The expanded scope of services includes: final oversight of petroleum remediation, documentation of remaining hydraulic fluid, testing for any remaining petroleum contamination and application for partial reimbursement from the MN Department of Commerce Petro-Fund.

The cost of these additional services is \$21,005.10 which results in a total contract amount of \$37,955.10. Funds are anticipated to come from the remaining Grandview TIF assets with a portion potentially to be reimbursed from the MN Petro-Fund.

- c. Proposal for Non-Standard Scope Limited Site Investigation dated 7/20/2013 and Summary email dated 7/28/13

Begin forwarded message:

**From:** "Holter, Sara" <[SHolter@Braunintertec.com](mailto:SHolter@Braunintertec.com)>  
**Date:** August 28, 2013, 10:38:45 AM CDT  
**To:** 'Chad Millner' <[cmillner@EdinaMN.gov](mailto:cmillner@EdinaMN.gov)>  
**Subject:** **Public Works Building-proposal summary**

Hi Chad,

Here is a quick summary:

Initial proposal:	\$16,950	
Amount over initial proposal:	\$4,032	(invoice 372444)
LSI proposal	\$16,309.10	(includes petrofund app. costs)
Additional boring	\$664	

Let me know if you need anything else, or have questions.

Thanks,

Sara

**Sara A. Holter**

**Staff Scientist**

**Braun Intertec**

11001 Hampshire Avenue S | Minneapolis, MN 55438

952.995.2494 direct | 612.751.4254 mobile

[sholter@braunintertec.com](mailto:sholter@braunintertec.com)

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[Intertec](#)

August 20, 2013

Proposal BL-12-07042A

Mr. Chad Millner  
City of Edina  
7450 Metro Boulevard  
Edina, MN 55424

Re: Proposal for Non-Standard Scope Limited Site Investigation  
Former City of Edina Public Works Building  
5146 Eden Avenue  
Edina, Minnesota  
Leak #19190

Dear Mr. Millner:

Braun Intertec prepared this Proposal to complete a Non-Standard Scope Limited Site Investigation (LSI) at the referenced property (Site). The underground storage tanks (USTs) and hoists were removed earlier this summer and soil impacts were observed during recent excavation activities at the Site. A release was reported to the Minnesota Pollution Control Agency (MPCA) and the Site was assigned leak #19190.

To further evaluate the extent and magnitude of the petroleum release as required by the MPCA, we are proposing the following scope of services based on the scope of services provided.

## Scope of Services

We have based our cost estimate on the following scope of work:

- Prepare a site-specific Health & Safety Plan.
- Conduct a vapor risk assessment.
- Conduct a water well receptor survey.
- Conduct a surface water receptor survey.
- Advance four soil borings to a depth of 20 feet below ground surface (bgs) at the Site for soil screening.
- Advance two soil borings to a depth of 40 feet bgs at the Site for soil screening.
- Advance four soil-vapor probes to a depth of 5 feet bgs to collect soil-vapor samples.
- Collect and screen soil samples from soil borings for the presence of organic vapors using a photoionization detector (PID).

- Collect one soil sample from each of the shallow soil borings and two soil samples from the deep borings to be analyzed for the presence and concentration of diesel range organics (DRO) and volatile organic compounds (VOCs). In addition, one duplicate and one trip blank sample will accompany the cooler and be submitted for VOC analysis. The trip blank sample will be analyzed at no additional charge.
- Due to the depth to groundwater, approximately 50 feet bgs, groundwater samples will not be collected.
- Prepare an LSI Report, which will include an excavation report, as required by the MPCA.

## Cost Estimate

Braun Intertec will invoice you for the services described above on an hourly and unit cost basis in accordance with the attached General Conditions. Although the actual cost associated with the above-listed service descriptions may be more or less than the estimated cost, the estimated cost will not be exceeded without additional authorization from you.

We have prepared a cost estimate for consulting, drilling, and laboratory services on the attached Petrofund contractor's bid document. The cost estimate for these services is based on the scope of work outlined below. We have summarized the cost estimates below for the LSI:

<u>Service Description</u>	<u>Cost Estimate</u>
Consulting and Field Services	\$ 4,052.60
Drilling Services	\$ 3,456.00
Laboratory Services	\$ 2,593.00
Report Preparation	\$ 4,707.50
<b>Estimated Total</b>	<b>\$ 14,809.10</b>

\* The project is eligible for potentially up to 90 percent reimbursement from the Minnesota Department of Commerce Petrofund. The cost to prepare a Petrofund Reimbursement application is not included in this proposal. The cost to prepare the Petrofund application is not eligible for reimbursement through the Department of Commerce Petrofund and is not included on the attached Petrofund bid forms. We can prepare the application for reimbursement for an additional **\$1,500.00**.

## Project Schedule

We will begin work on this project upon receipt of your written authorization. Based on our current schedule, we anticipate that we could mobilize to the Site within three weeks after receiving authorization. Approximately one and a half days will be required to complete the drilling and sampling activities. Standard turnaround for laboratory analysis is approximately eight working days. Upon review of the analytical results, approximately three weeks will be required to prepare the LSI report.

A draft LSI report will be forwarded to you for review. The LSI report will remain in draft status until we are notified by you to proceed with issuance of the final report. The final LSI report will be submitted to the MPCA for review and approval.

## **Utility Clearance**

Braun Intertec or our subcontractor will contact Gopher State One-Call to request that they make arrangements for public utility representatives to determine the locations of public underground utilities. Braun Intertec requests that you or your authorized representative notify the Braun Intertec project manager immediately of the presence and location of any underground objects, which are not the responsibility of public utilities. Braun also will subcontract a private utility locator to assist in clearing the proposed locations.

In authorizing this proposed contract, you agree to waive any claim against Braun Intertec and will indemnify and hold Braun Intertec harmless from any claim of liability, injury or loss allegedly arising from the damaging of underground objects not called to our attention prior to beginning the work.

**Acceptance of Proposal**

Braun Intertec appreciates the opportunity to present this proposal to you. It is being presented in duplicate so if it is acceptable, the original can be retained for your records and **the copy can be signed and returned to us electronically, by fax, or U.S. Mail in its entirety**, as written authorization to proceed. We will begin the project upon receipt of your authorization.

The estimated cost of \$16,309.10 (includes petrofund application) presented in this proposal is based on the scope of services described and the assumption that the proposal will be authorized within 30 days and that the project will be completed within the proposed schedule. If the project is not authorized within 30 days, we may need to modify the proposal. If the project cannot be completed within the proposed schedule due to circumstances beyond our control, revising the proposal may be required for completion of the remaining tasks. The project will be conducted in accordance with the General Conditions, which are part of this contract.

If you have questions concerning the contents of this proposal or the project in general, please call Jason Kunze at 952.995.2436.

Sincerely,

BRAUN INTERTEC CORPORATION

  
Sara A. Holter  
Staff Scientist

  
Jason J. Kunze  
Associate Principal

Attachment:  
Limited Site Investigation Non-Standard Scope Proposal and Invoice Form  
General Conditions (6/15/06)

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**Acceptance of Proposal**

Please proceed according to the described scope of services:

\_\_\_\_\_  
**Authorizer's Firm**

\_\_\_\_\_  
**Authorizer's Signature**

\_\_\_\_\_  
**Authorizer's Name (please print or type)**

\_\_\_\_\_  
**Authorizer's Title**

\_\_\_\_\_  
**Date**

Petroleum Tank Release Cleanup Fund  
Standardized Proposal and Invoice Form  
**Limited Site Investigation (LSI)  
or Full Remedial Investigation  
Nonstandard Scope of Work**

**MPCA Leak #** 19190

**Applicant Name** City of Edina

**Address** 7450 Metro Blvd  
Edina, MN

**Leaksite Name** Former Public Works Building

**Site Address** 5146 Eden Avenue  
Edina, MN 55424

Task Description	Petrofund Maximum Unit Cost*	Amount Proposed	Amount Invoiced for Proposed Tasks
<b>Administrative Tasks</b>			
Agency status update	\$116 per field work event	\$210.00	\$
Applicant status update [drilling]	\$629 per drilling event	\$0.00	\$
Applicant status update [quarterly sampling]	\$169 per quarterly sampling event	\$0.00	\$
Background review	\$678 per leak site	\$0.00	\$
Drum disposal management	\$339 per disposal	\$0.00	\$
Field work notification and scheduling	\$230 per field work event/see rule	\$315.00	\$
Health and safety plan	\$303 per leak site	\$210.00	\$
Nonspecific administration	\$242 per step of services	\$231.00	\$
Off-site access time	\$1,210 per required off-site property	\$0.00	\$
Sample shipping and transportation	\$109 per shipping event	\$0.00	\$
State duty officer emergency contact	\$165 per call	\$0.00	\$
<b>Consultant Drilling and Excavation Activities</b>			
Drilling oversight, field log prep, & soil sampling [25' or shallower boring]	\$182 per boring	\$707.00	\$
Drilling oversight, field log prep, & soil sampling [boring deeper than 25']	\$8 per foot	\$917.00	\$
Free product recovery through hand bailing or portable pump	\$128 per well per event	\$0.00	\$
Hydraulic conductivity field test	\$169 per nec. tested well	\$0.00	\$
Monitoring well installation oversight & development [up to 2 hrs.]	\$339 per well	\$0.00	\$
Monitoring well installation oversight & development [beyond 2 hrs]	\$508 per well	\$0.00	\$
Monitoring well sealing oversight	\$85 per well	\$0.00	\$
Surveying & surveying equipment	\$230 per surveying event	\$0.00	\$
Surveying & surveying equipment [licensed pro surveyor necessary]	\$908 per surveying event	\$0.00	\$
Temporary well installation oversight [25' or shallower well]	\$182 per well	\$0.00	\$
Temporary well installation oversight [well deeper than 25']	\$8 per foot	\$0.00	\$
Utility backfill investigation	\$85 per hand-auger boring	\$0.00	\$
Utility clearance	\$242 per utility clearance event	\$216.00	\$
Utility clearance [private utility locator necessary]	\$605 per clearance event	\$0.00	\$
<b>Field and Receptor Surveys</b>			
Karst field survey	\$2,396	\$0.00	\$
Surface water receptor survey and risk evaluation	\$169 per leak site	\$154.00	\$
Vapor receptor survey and risk evaluation	\$847 per leak site plus:	\$385.00	\$
▪ citizen contact [beyond 8]	▪ \$21 each	# of add'l contacts:	
▪ subsurface monitoring point [beyond 8]	▪ \$43 each	# of add'l pts.:	
Water well receptor survey and risk evaluation	\$911 per leak site plus:	\$385.00	\$
▪ citizen contact or property surveyed [beyond 15]	▪ \$43 each	# of add'l cc or ps:	
<b>Sampling</b>			
AST soil sampling	\$43 per sample on chain-of-custody	\$0.00	\$
Composted soil sampling	\$85 per sampling event	\$0.00	\$
Contaminated stockpile soil sampling	\$43 per sample on chain-of-custody	\$0.00	\$
Excavation soil sampling [tank being removed or abandoned]	\$85/tank + \$4.24/cy excavated	\$0.00	\$
Excavation soil sampling [tank not being removed or abandoned]	\$1.70 per cubic yard excavated	\$0.00	\$
Excavation soil sampling [test pit excavation]	\$85 per test pit	\$0.00	\$
Groundwater sampling (permanent monitoring well)	\$149/well per sampling event	\$0.00	\$
Groundwater sampling (other than permanent monitoring well)	\$43 per sampling point	\$0.00	\$
Land-treated soil sampling	\$85 per sampling event	\$0.00	\$

\* See Minn. Rules, Chapter 2890 for complete information. These values are summarized and are only a guide.



**INVOICE SUMMARY (to be completed by consultant after the work has been performed)**

Total amount invoiced for proposed tasks (enter amount from page 2)	\$0.00
Total amount invoiced for tasks not proposed (enter amount associated with column A of the Change Order form)	\$0.00
<b>GRAND TOTAL AMOUNT INVOICED FOR WORK PERFORMED</b>	\$0.00

**CONSULTANT**

Consultant Providing Above Proposal Braun Intertec Corporation

Contact Person \_\_\_\_\_

Phone 952.995.2000

Fax 952.995.2020

E-mail Address \_\_\_\_\_

I hereby certify that this document accurately reflects the details specified in the RFP dated \_\_\_\_\_ and the anticipated costs for consultant services to be performed for a limited site investigation, which total \$14,809.10. I further certify that the hourly rates to be charged for consultant services **WILL NOT** exceed the maximum hourly labor rates for consultant services listed in Minn. Rule 2890.1400 [Maximum hourly rates are as follows: SLP = \$143, MLP = \$105, ELP = \$77, FT = \$72, DP = \$61, WP = \$44]. If line is not marked, it is assumed to be "will not."

X Sara Muller \_\_\_\_\_ Date 8-20-2013

Consultant Name (please print) Consultant Signature

**Braun Intertec Corporation** \_\_\_\_\_ **1252** \_\_\_\_\_

Consultant Company Petrofund Registration Number

**APPLICANT**

The proposal must be signed and dated by the consultant.

To choose this proposal, you must sign and date the proposal that you accept in front of a Notary Public.

NOTARIZATION (of applicant signature)

Signed or attested before me this \_\_\_\_ day

of \_\_\_\_\_, 200\_\_.

X \_\_\_\_\_ Date \_\_\_\_\_

Signature of applicant indicating acceptance

\_\_\_\_\_  
Applicant Name (please print)

\_\_\_\_\_  
Company

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

**Laboratory and Drilling Services Cost Worksheet**

<b>Laboratory Services - Soil</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Gasoline Range Organics (GRO) with BETX/MTBE		\$ 44.00	\$0.00
Diesel Range Organics (DRO)	9	\$ 50.00	\$450.00
BETX/MTBE		\$ 44.00	\$0.00
Volatile Organic Compounds (VOCs) MDH 465A	9	\$ 127.00	\$1,143.00
RCRA Metals (As, Ba, Cd, Cr, Pb, Hg, Se, Ag)		\$ 138.00	\$0.00
Lead (Pb)		\$ 28.00	\$0.00
Polychlorinated Biphenyls (PCBs)		\$ 121.00	\$0.00
Polyaromatic Hydrocarbons (PAHs) by HPLC		\$ 149.00	\$0.00
<b>Subtotal, Soil</b>			<b>\$1,593.00</b>
<b>Laboratory Services - Water</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Gasoline Range Organics (GRO) with BETX/MTBE		\$ 44.00	\$0.00
Diesel Range Organics (DRO)		\$ 50.00	\$0.00
BETX/MTBE		\$ 44.00	\$0.00
Volatile Organic Compounds (VOCs) MDH 465A		\$ 127.00	\$0.00
RCRA Metals (As, Ba, Cd, Cr, Pb, Hg, Se, Ag)		\$ 138.00	\$0.00
Lead (Pb)		\$ 28.00	\$0.00
Polychlorinated Biphenyls (PCBs)		\$ 121.00	\$0.00
Polyaromatic Hydrocarbons (PAHs) by HPLC		\$ 149.00	\$0.00
<b>Subtotal, Water</b>			<b>\$0.00</b>
<b>Laboratory Services - Grain Size</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Grain Size Analysis - sieve only		\$ 83.00	\$0.00
Grain Size Analysis - sieve and hydrometer		\$ 165.00	\$0.00
<b>Subtotal, Grain Size</b>			<b>\$0.00</b>
<b>Laboratory Services - Air</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
TO-15 VOCs Standard Listing including Summa Cannister	4	\$ 250.00	\$1,000.00
<b>Subtotal, Air</b>			<b>\$1,000.00</b>
<b>Total Laboratory Costs</b>			<b>\$2,593.00</b>
<b>Equipment Costs</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
PID, per day	2	\$70.00	\$140.00
<b>Total Equipment Costs</b>			<b>\$140.00</b>

**DRILLING SERVICES**

<b>DIRECT PUSH</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Retraction force up to 15,000 lbs, per hour		\$164.00	\$ -
Retraction force greater than 15,000 lbs, per hour	12	\$ 220.00	\$ 2,640.00
Probe sealing, per foot	180	\$ 1.20	\$ 216.00
Mobilization, 0 - 50 miles one way (enter total # of mobes)	2	\$ 300.00	\$ 600.00
Mobilization, 51 - 500 miles one way (enter total miles)		\$ 7.00	\$ -
<b>Total Direct Push Costs</b>			<b>\$ 3,456.00</b>

<b>HOLLOW STEM AUGER</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Up to 25 feet, per boring (number of borings 25 feet or less)		\$ 770.00	\$ -
26 to 50 feet (enter total footage of all borings/wells >25 feet)		770+26/ft	
<b>Hollow Stem Auger Above Grade Wells</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Up to 25 feet, per boring (number of borings 25 feet or less)		\$1,150.00	\$ -
26 to 50 feet (enter total footage of all borings/wells >25 feet)		\$51.00	\$ -
<b>Hollow Stem Auger At-Grade Wells</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Up to 25 feet, per boring (number of borings 25 feet or less)		\$1,694.00	\$ -
26 to 50 feet (enter total footage of all borings/wells >25 feet)		\$51.00	\$ -
<b>Boring and Well Sealing</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Soil boring sealing		\$ 4.00	\$ -
2-inch well sealing		\$ 12.00	\$ -
4-inch well sealing		\$ 18.00	\$ -
6-inch well sealing		\$ 24.00	\$ -
At-grade pad removal, each		\$ 303.00	\$ -
<b>Mobilization - Drill Rig</b>	<b>Units</b>	<b>Rate</b>	<b>Cost</b>
Up to 50 miles one way (enter total # of mobes)		\$ 484.00	\$ -
51 to 500 miles one way (enter total miles one way)		\$ 8.00	\$ -
<b>Total Hollow Stem Auger Costs</b>			<b>\$ -</b>

<b>TOTAL DRILLING COSTS</b>			<b>\$ 3,456.00</b>
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Our agreement (“Agreement”) with you consists of these General Conditions and the accompanying written proposal or authorization.

## **Section 1: Our Responsibilities**

**1.1** We will provide the services specifically described in our Agreement with you. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

**1.2** In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction.

**1.3** We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and, further, that site conditions may change over time.

**1.4** Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

**1.5** We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.

**1.6** You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our

employees are authorized by you to refuse to work under conditions that may be unsafe.

**1.7** Estimates of our fees or other project costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

## **Section 2: Your Responsibilities**

**2.1** You will provide us with prior geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed our work.

**2.2** You will provide access to the site. In the course of our work some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of normal damage in the estimated charges.

**2.3** You agree to provide us, in a timely manner, with information that you have regarding buried objects at the site. We will not be responsible for locating buried objects at the site unless we accept that duty in writing. You agree to hold us harmless from claims, damages, losses, and related expenses involving buried objects of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others on your behalf furnished to us.

**2.4** You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials in a sample provided to us. You agree to provide us with information in your possession or control relating to contamination at the work site. If we observe or suspect the presence of contaminants not anticipated in our Agreement, we may terminate our work without liability to you or to others, and we will be paid for the services we have provided.

**2.5** Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. You agree to hold us harmless and indemnify us from any such claim or loss.

**2.6** Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless we accept that duty in writing.

**2.7** You agree to make disclosures required by law. In the event you do not own the site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. You agree to hold us harmless and indemnify us from claims related to disclosures made by us that are required by law and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.

## **Section 3: Reports and Records**

**3.1** We will furnish reports to you in duplicate. We will retain analytical data for seven years and financial data for three years.

**3.2** Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval, which will not be unreasonably withheld. You agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

**3.3** Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you. In case of any difference or ambiguity between an electronic and a paper document, the paper document shall govern.

**3.4** If you do not pay for our services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control. You agree not to use or rely upon our work for any purpose whatsoever until it is paid for in full.

**3.5** Samples remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleaned of contaminants are and continue to be your property. They will be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

#### **Section 4: Compensation**

**4.1** You will pay for services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

**4.2** You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices on receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

**4.3** If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

**4.4** You agree to compensate us in accordance with our fee schedule if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

**4.5** If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation. If you and we do not reach agreement on such compensation within 30 days of our written application, we may terminate without liability to you or others.

**4.6** If you fail to pay us within 60 days following invoice date, we may consider the default a total breach of our Agreement and, at our option, terminate our duties without liability to you or to others.

**4.7** In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to fees otherwise due us.

#### **Section 5: Disputes, Damage, and Risk Allocation**

**5.1** Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

**5.2** Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

**5.3** We will not be liable for damages unless suit is commenced within two years of the date of injury or loss or within two years of the date of the completion of our services, whichever is earlier. We will not be liable unless you have notified us of the discovery of the claimed breach of contract, negligent act, or omission within 30 days of the date of discovery and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages.

**5.4** For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability will not exceed the fee paid for our services or \$50,000, whichever is greater, and you agree to indemnify us from all liability to others in excess of that amount. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of our Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.

**5.5** If you do not pay us within 60 days of invoice date, or if you make a claim against us that is resolved in our favor, you agree to reimburse our expenses, including but not limited to attorney fees, staff time, expert witness fees, and other costs of collection or litigation.

**5.6** The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury. No employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not make a claim against individual employees.

#### **Section 6: General Indemnification**

**6.1** We will indemnify and hold you harmless from and against demands, damages, and expenses to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

**6.2** To the extent it may be necessary to indemnify either of us under Section 6.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

**6.3** You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

#### **Section 7: Miscellaneous Provisions**

**7.1** We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our sole negligence.

**7.2** This Agreement is our entire agreement. It supersedes prior agreements. It may be modified only in a writing, making specific reference to the provision modified.

**7.3** Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

**7.4** Our Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

Revised 6-15-06