



ECS Midwest, LLC

Estimated Fee Proposal for Construction Materials Testing and
Observation Services

Palmyra PFAS Water Treatment Plant - Village of Palmyra

203 Jefferson St

Palmyra, Wisconsin 53156

ECS Proposal No. 42:4690

June 16, 2026





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Mr. Andrew Rockweiler
MSA Professional Services, Inc.
1230 South Boulevard
Baraboo, Wisconsin 53913

Reference: Estimated Fee Proposal for Construction Materials Testing and Observation Services
Palmyra PFAS Water Treatment Plant - Village of Palmyra
203 Jefferson St
Palmyra, Wisconsin 53156
ECS Proposal No. 42:4690

Dear Mr. Rockweiler:

ECS Midwest, LLC (ECS) appreciates the opportunity to submit this proposal to provide Construction Materials Testing and Observation Services for the above-referenced project. This proposal contains our project understanding, proposed scope of services, fee estimate with applicable schedule of unit rates, and authorization requirements.

Our considerable experience with similar projects will help us provide efficient, cost-effective construction observation, testing, and engineering consulting services.

We look forward to the opportunity to work with you on this project and to serve as your consultant in the future. If you have any questions, or if we can be of any additional service, please contact us at (414) 286-7557.

Respectfully submitted,

ECS Midwest, LLC

David P Drow
CMT Group Supervisor

Steve Homar
Office Manager

PROJECT UNDERSTANDING

Our understanding of the project is that it will include new construction of a specialized water treatment facility.

SCOPE OF SERVICES

The scope of services for this project includes the testing and observation associated with the planned development. The scope of services for this project is outlined in more detail in Appendix I of this proposal.

CONSTRUCTION DOCUMENTS

ECS was provided the following documents, which were used to prepare this proposal: The estimated fee is the product of consideration of all information available to us during preparation of this proposal. The estimated fees for this project are outlined in Appendix III.

	Prepared by	Revision Title	Date
Architectural Drawings	MSA Architecture & Engineering	Bid Set	1-26-2026
Civil Drawings	MSA Architecture & Engineering	Bid Set	1-26-2026
Structural Drawings	MSA Architecture & Engineering	Bid Set	1-26-2026

UNDERSTANDING CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTIONS

Construction Materials Testing (CMT) and Special Inspections (SI) are performed to help provide the project's contractors, designers, owners, and local code officials with some indication of the level of compliance obtained by the installing contractors with the project specifications. These services are provided at periodic intervals, which typically are defined by the project specifications and on some occasions by the applicable building code. Test locations for most materials, i.e. soils, concrete, and fireproofing, are generally based upon random selection, as such, not all materials incorporated into a construction project are tested or observed.

The greater the testing frequency, the greater the confidence level that the test results are representative of other untested areas; however, no amount of testing can assure 100% compliance. Testing and observation services provided by ECS do not relieve the installing contractors from their obligation to install all materials in accordance with the applicable project plans and specifications. ECS makes a reasonable effort to test in accordance with the applicable project requirements and to identify areas of materials that may not comply with the project specifications. However, due to the periodic and random nature of our testing, we cannot guarantee that all materials have been installed in accordance with the specifications. The responsibility to correct or remediate non-complying conditions, even non-complying conditions discovered after testing or during subsequent phases of construction remains solely with the installing contractors.

FEES FOR SERVICES

ECS proposes to conduct our scope of services on a unit rate basis in accordance with the fee schedule included in Appendix II. We have utilized this fee schedule along with the plans and specification to derive

the estimated fees which are shown in Appendix III. Services provided for this project will be billed in accordance with the unit rate fee schedule provided in Appendix II of this proposal. Our professional judgment was used to determine the estimated fees; however, there are many factors that are not in ECS' control once the project starts, such as the contractor's working hours and intensity, which could affect over-time the estimated fees for our services. We will endeavor to work and invoice the client within the confines of our estimated fees; however, the estimated fees are not represented as a lump sum price or a not-to-exceed value.

Any and all deviations from the assumed quantities and timeframes detailed in the attached estimate are not included and will be considered as an addition to our proposed scope of service. Please note that we have not included site visits for the specific task of retesting or re-observing failed tests/non-compliant work. Time for Project Engineers to attend meetings (other than those included in our estimate fee herein) have not been included in the estimated fee. Actual fees may be greater or less than the estimate based upon actual quantities that will be calculated using the enclosed schedule of unit rates.

Should supplemental services be deemed necessary at a later date, they would be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance.

ECS field services will be rendered portal-to-portal from our office in Waukesha, WI. Our unit rates are based on a normal 8-hour work day, Monday through Friday. Overtime beyond 8 hours per day, 40 hours per week, outside the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday and Saturdays will be invoiced at a rate of 1.5 times the normal hourly rate. ECS recognized Holidays and Sundays will be invoiced at a rate of 2 times the normal hourly rate. [REFERENCE APPENDIX II]

BILLING AND CONTRACT CONDITIONS

Invoices will be issued on a monthly basis and will provide a breakdown of billing units. Upon request, ECS Midwest, LLC will provide a separate invoice for services provided outside of the proposed scope of work. Invoices are normally processed on or around the 10th of each month and represent costs incurred during the previous month. These invoices will typically display a monthly cumulative summary of project costs to date. This monthly summary will serve as a means of monitoring expenses as they relate to job progress. We request that payment be rendered within 30 days of receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days. ECS also reserves the right to withhold final certifications until outstanding balances have been paid in full.

COMMUNICATIONS AND SCHEDULING

Our service will be provided on an on-call basis. **The appropriate contractor or owner representative should contact Shibulal Karunakaran at [SKarunakaran@ECSLimited.com, 262-497-2222] or call our office at 414-286-7557 and ask to speak to Zach Schroeder [ZASchroeder@ECSLimited.com, 414-897-2796] or Steve Homar [SHomar@ECSLimited.com, 414-240-4846].**

Scheduling or cancellation should occur prior to 3:00 p.m. on the day before services are required. After that time, we will make every effort to schedule or cancel, but we cannot guarantee results. Services cancelled without advance notice will be assessed a minimum 4-hour charge upon arrival at the site. We reserve the right to charge up to a 2-hour minimum for cancellation requests received while the technician is on route, plus mileage.

ECS requests that all materials proposed for compaction or fill placement be submitted to our laboratory for testing a minimum of one week in advance of their placement on the project.

ECS reports are distributed by e-mail. Please list those to whom the reports should be sent and provide their e-mail on the attached Proposal Acceptance Form [Appendix IV].

ECS ADVANTAGES

In addition to the standard services many local testing agencies provide, ECS has distinguished itself on multiple disciplines to allow us to “Set the Standard of Service” for you, our clients. Most notably:

- **Resources.** Our size allows us to maintain consistent staffing levels to meet your project’s needs. We currently have 85+ offices and testing facilities, and 2,500+ employees.
- **Experience.** In 2023, ECS celebrated its 35th anniversary.
- **Technology.** Electronic Paperless reporting. All recorded data is stored digitally for ease or reproduction.
- **Efficiency.** Our paperless reporting allows us to save costs which we pass directly to our clients.

AUTHORIZATION

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

By signing the Proposal Acceptance Form or by referencing this proposal in other documents intended to authorize ECS to proceed with the scope of services described, you are also accepting the Terms and Conditions of Service and making this proposal the agreement between ECS and our Client.

Fully completing and signing the attached Proposal Acceptance Form as our client will provide formal authorization for ECS to enter the site and perform the above work, as well as provide proper invoicing instructions and distribution lists for reports and correspondence. Please provide any specific instructions or details not covered in this proposal on the attached Proposal Acceptance Form. Please note we have provided a place for you to enter invoicing instructions and report distribution.

Attachments:

- Appendix I – Scope of Services
- Appendix II – Fee Schedule
- Appendix III – Estimated Fees
- Appendix IV – Proposal Acceptance Form
- ECS Midwest, LLC Terms and Conditions of Service

APPENDIX I – SCOPE OF SERVICES

A. Shallow Foundations

1. Document the dimensions of building foundation elements, dumpster pad elements, and report compliance with the approved documentation.
2. Test surface bearing of soils at footing subgrades and determine whether the soil meets or exceeds design parameters through correlation of soil boring data, use of the Dynamic Cone Penetrometer, and reference to approved drawings.
3. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

B. Earthwork

1. Perform appropriate laboratory testing on materials proposed for use as fill, backfill in accordance with project specifications. Testing may include:
 - a. Proctor Moisture Density Relationships
2. Periodically observe excavation operations to document removal of unsuitable materials including debris, unsuitable soil or stones with a maximum dimension greater than 6 inches.
3. Observe condition of bottom of excavations prior to foundation preparation, note seepage of water, and suggest and observe corrective measures at problem areas.
4. Observe proof-rolling by means specified in the geotechnical report to identify weak areas in the native soil or prepared subgrade prior to structural fill placement or finishing courses.
5. Observe placement of fill and backfill for compliance with project requirements.
6. Perform in-place density tests as required by project specifications and test each lift for compaction. per the Nuclear Test Method (ASTM D6938).
7. Where deficiencies are noted during fill or backfill placement, suggest and observe remedial actions, including reworking and recompacting of materials.
8. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

C. Cast-in-Place Concrete

1. Test and report concrete for compliance with the provisions of ACI, local building codes, generally accepted construction practices, and specific project requirements.
2. Observe placement of reinforcing steel and accessories to document conditions and installation for general compliance with the project drawings and specifications.
3. Sample concrete at the frequency stated in the project specifications and perform the following tests and functions:
 - a. Confirm mix design
 - b. Slump
 - c. Air Content
 - d. Temperature
 - e. Batch-to-placement time
 - f. Cast test cylinders
4. Sampling, testing, and curing of specimens in the field shall be performed in accordance with applicable ASTM guidelines and project requirements. Additional tests shall be performed as needed in the event deficiencies are encountered. Compliance with extreme weather procedures will also be documented.
5. Curing and testing of concrete cylinders in the laboratory shall be performed in accordance with applicable ASTM guidelines and project requirements. Four-inch by eight-inch cylinder

- size is proposed. Six-inch by twelve-inch cylinder size may be utilized for testing mixes with 1½-inch aggregate or seasonally, due to colder temperatures during the initial curing period.
6. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

D. Asphaltic Concrete Pavement (HMA/Superpave)

1. Record the temperature of the asphalt delivery truck in an effort to ensure compliance with the job site's specifications.
2. Perform in-place backscatter density tests of asphalt as required by project specifications and test each lift for compaction per applicable test method.
3. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

E. Structural Steel

1. Document field welder certifications to confirm that welders have current certifications for welding operations that they perform.
2. Perform the following functions related to structural steel erection in the field:
 - a. Observation of welded and bolted connections for general compliance with project documents and specifications.
 - b. Perform non-destructive examination on designated welds in accordance with project specifications.
3. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

F. Masonry

1. Periodically observe procedures and materials to document general compliance with project documents and specifications.
2. Observe placement of reinforcing steel (vertical and horizontal) for general compliance with project documents and specifications.
3. Obtain grout prisms as required in the specifications, and test grout for compressive strength.
4. Obtain mortar specimens and test mortar in accordance with applicable ASTM guidelines and project requirements.
5. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

G. Floor Flatness/Floor Levelness (FF/FL)

1. Measure floor flatness (FF) and floor levelness (FL) utilizing test apparatus (D-Meter) to determine the FF and FL values throughout the slab.
2. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

APPENDIX II – FEE SCHEDULE

Field Services

	<u>Unit Rate</u>
1. Field Technician	\$ 65.00/hour
2. Senior Field Technician	\$ 110.00/hour
3. Structural Steel Inspector, CWI	\$ 175.00/hour
4. Sample Pickup (hourly)	\$ 60.00/hour
5. Cylinder Pickup (hourly)	\$ 60.00/hour
6. Trip Charge	\$ 44.00/trip

Laboratory & Related Services

1. Modified Proctor ASTM D1557	\$ 200.00/test
2. Compressive Strength, Concrete Cylinders	\$ 20.00/each
3. Compressive Strength, Grout Prisms	\$ 35.00/each
4. Compressive Strength, Mortar Cubes	\$ 25.00/each
5. Soil Bearing Equipment Use	\$ 20.00/day
6. Concrete/Masonry Equipment Use	\$ 20.00/day
7. Nuclear Gauge Use	\$ 50.00/day
8. Floor Flatness Equipment Use	\$ 75.00/each
9. CWI/UT Vehicle	\$ 85.00/day

Administrative Services

1. Field Reports	\$ 60.00/each
2. Compressive Strength Test Reports	\$ 30.00/each
3. Project Manager	\$ 125.00/hour
4. CMT Group Supervisor	\$ 155.00/hour
5. Principal Engineer	\$ 210.00/hour
6. Project Executive	\$ 250.00/hour

APPENDIX III – ESTIMATED FEES

PALMYRA PFAS WATER TREATMENT PLANT - VILLAGE OF PALMYRA					
FIELD SERVICES	Quantity		Total Units	Rate Units	Fee
Soils/Materials Technician (Grading)	5 days	5 hours/day	25 hours	\$65.00 / hour	\$ 1,625.00
Field Technician (Foundation Soil)	4 days	4 hours/day	16 hours	\$65.00 / hour	\$ 1,040.00
Field Technician (Footing/Pad Rebar/Concrete)	2 days	4 hours/day	8 hours	\$65.00 / hour	\$ 520.00
Field Technician (Stem Wall/Pier Rebar/Concrete)	4 days	5 hours/day	20 hours	\$65.00 / hour	\$ 1,300.00
Soils/Materials Technician (Interior SOG Concrete)	2 days	4 hours/day	8 hours	\$65.00 / hour	\$ 520.00
Field Technician (Sitework Concrete)	3 days	4 hours/day	12 hours	\$65.00 / hour	\$ 780.00
Field Technician (Utility Backfill)	4 days	4 hours/day	16 hours	\$65.00 / hour	\$ 1,040.00
Soils/Materials Technician (Asphalt)	2 days	5 hours/day	10 hours	\$65.00 / hour	\$ 650.00
Senior Field Technician (Floor Flatness/Levelness)	1 day	5 hours/day	5 hours	\$110.00 / hour	\$ 550.00
Senior Field Technician (Masonry/Mortar/Grout)	8 days	4 hours/day	32 hours	\$110.00 / hour	\$ 3,520.00
Structural Steel Inspector, CWI	3 days	5 hours/day	15 hours	\$175.00 / hour	\$ 2,625.00
Sample Pickup (hourly)	1 trip	3 hours/trip	3 hours	\$60.00 / hour	\$ 180.00
Cylinder Pickup (hourly)	15 trips	3 hours/trip	45 hours	\$60.00 / hour	\$ 2,700.00
Trip Charge			56 trips	\$44.00 / trip	\$ 2,464.00
Field Services Subtotal:					\$ 19,514.00
LABORATORY & RELATED SERVICES	Quantity		Total Units	Rate Units	Fee
Modified Proctor ASTM D1557			2 tests	\$200.00 / test	\$ 400.00
Compressive Strength, Concrete Cylinders	15 sets	5 cylinders/set	75 cylinders	\$20.00 / each	\$ 1,500.00
Compressive Strength, Grout Prisms	8 sets	4 samples/set	32 samples	\$35.00 / each	\$ 1,120.00
Compressive Strength, Mortar Cubes	8 sets	3 samples/set	24 samples	\$25.00 / each	\$ 600.00
Soil Bearing Equipment Use			4 days	\$20.00 / day	\$ 80.00
Concrete/Masonry Equipment Use			8 days	\$20.00 / day	\$ 160.00
Nuclear Gauge Use			15 days	\$50.00 / day	\$ 750.00
Floor Flatness Equipment Use			1	\$75.00 / each	\$ 75.00
CWI/UT Vehicle			3 days	\$85.00 / day	\$ 255.00
Laboratory & Related Services Subtotal:					\$ 4,940.00
ADMINISTRATIVE SERVICES	Quantity		Total Units	Rate Units	Fee
Field Reports			56	\$60.00 / each	\$ 3,360.00
Compressive Strength Test Reports			62	\$30.00 / each	\$ 1,860.00
Project Manager			10 hours	\$125.00 / hour	\$ 1,250.00
Principal Engineer			4 hours	\$210.00 / hour	\$ 840.00
Administrative Services Subtotal:					\$ 7,310.00
ESTIMATED TOTAL FEES:					\$ 31,764.00

APPENDIX IV – PROPOSAL ACCEPTANCE FORM

ECS Midwest, LLC

Project Name: Palmyra PFAS Water Treatment Plant - Village of Palmyra
 ECS Proposal: 42:4690
 Location: Palmyra, Wisconsin 53156

Please complete and return this Proposal Acceptance Form to ECS as shown at the bottom of this form. By signing and returning this form, you are providing us with authorization to proceed, providing us permission to enter the site, and making this proposal the agreement between us. Your signature also indicates that you have read this document and the terms and conditions of service in its entirety and agree to pay for these services as above set forth. Should any changes to the proposal be necessary, the change shall be mutually accepted with an ECS countersignature.

CLIENT AND BILLING INFORMATION

	<u>Invoiced Addressee</u>	<u>Report Addressee</u>
Client Company/Entity Name:	_____	_____
Address:	_____	_____
Address:	_____	_____
City, State, Zip:	_____	_____
Contact Person:	_____	_____
Telephone No.:	_____	_____
Email Address:	_____	_____

If you require copies to others or invoice approval different than above, please check box for invoice and/or reports and provide their contact names, company, e-mail addresses and phone numbers below.

Invoice Reports	Contact Name	Company	Email Address	Phone Number
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	_____

Special Instructions: _____

Client Signature: × _____ **Date:** _____

Print Client Name: _____

Please return signed authorization to David P Drow at DDRRow@ecslimited.com.



ECS MIDWEST, LLC
TERMS AND CONDITIONS OF SERVICE

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

- 1.0 **INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Services on the Project and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants
- 2.0 **SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S, agents, contractors and consultants ("Contractors"). CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.
- 3.0 **STANDARD OF CARE**
- 3.1 **In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guarantee of any nature whatsoever.**
- 3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.
- 3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS's professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.
- 3.4 If CLIENT decides to disregard ECS's recommendations with respect to complying with applicable laws or regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS's sole right to make.
- 4.0 **CLIENT DISCLOSURES**
- 4.1 Where the Services requires ECS to penetrate a surface, CLIENT shall furnish and/or shall direct CLIENT'S or CLIENT'S Contractors to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.
- 4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.
- 4.3 If any Hazardous Materials are discovered or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees or fee schedule to reflect any additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 **INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S Contractors, including such information that becomes incorporated into ECS documents.
- 6.0 **CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. CLIENT agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS's additional services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 **RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
- 7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the site for the performance of Services. CLIENT hereby grants ECS and its agents, subcontractors and/or subconsultants ("Subconsultants"), the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS and its Subconsultants harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.
- 7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS's Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.
- 7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS's Proposal.
- 7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS's findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.
- 8.0 **UNDERGROUND UTILITIES**
- 8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS's sole discretion.
- 8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features. CLIENT shall notify ECS in writing of any private utilities or nonferrous piping that would not be found with standard magnetic detection devices. CLIENT shall be charged an additional fee if ECS is requested to use ground penetrating radar in an effort to locating underground utilities or structures.
- 8.3 CLIENT shall indemnify, defend, and hold ECS harmless from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS's attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS's or ECS's Subconsultant's request for utility marking services made in accordance with local industry standards.
- 9.0 **SAMPLES**
- 9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the first issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.
- 9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing by-products in accordance with applicable laws and regulations.
- 10.0 **ENVIRONMENTAL RISKS**
- 10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
- 10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS's subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.
- 10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
- 10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this Agreement to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.
- 10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone.

Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

- 10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

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

12.0 SAFETY

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

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any of CLIENT'S Contractors or any of their subcontractors.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full-time basis to lower the risk of defective or incomplete work being installed by CLIENT'S Contractors. If CLIENT elects to retain ECS on a part-time or on-call basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risk that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS's part time monitoring and testing in exchange for CLIENT'S receipt of an immediate cost savings. Unless the CLIENT can show that ECS's errors or omissions are contained in ECS's reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part-time or on-call basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all Damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from work that was monitored or tested by ECS on a part-time or on-call basis.

- 14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS's inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS's professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the professional fees section of the Proposal. Any estimate of professional fees stated shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
- 15.2 CLIENT agrees that all professional fees and other unit rates may be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of one percent (1%).
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the scope of Services, professional fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS's invoices, and that timely payment is a material consideration for this Agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the professional Fees. Invoices are due and payable upon receipt. The parties acknowledge and agree that any suit, action or proceeding arising out of or related to failure of CLIENT to pay ECS's invoices pursuant to the Terms of this Agreement shall be instituted in Fairfax County Circuit Court located in Fairfax, Virginia or such other court of competent jurisdiction, in ECS's sole and absolute discretion. Each of the parties waives any objection that it may have to the venue of any such suit, action, or proceeding, and each of the parties hereby irrevocably consents to the personal jurisdiction of any such court in any such suit, action or proceeding.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice date. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set offs by CLIENT. CLIENT acknowledges that all payments made by credit card shall be subject to a three percent (3%) convenience fee.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT's client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS's Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

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

- 17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain workers compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for

requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

18.1 **CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS'S TOTAL LIABILITY TO CLIENT ARISING FROM ECS'S PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS:**

18.1.1 If the proposed fees are \$10,000 or less, ECS's total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.

18.1.2 If the proposed fees are in excess of \$10,000, ECS's total aggregate liability to CLIENT shall not exceed \$50,000, or the total fee for the services rendered, whichever is greater.

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

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

19.0 INDEMNIFICATION

19.1 Subject to Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS's negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS's negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.) ECS does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, or any other statute.

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 disproportionate to ECS's culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNERS' ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**

19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**

19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**

20.0 CONSEQUENTIAL DAMAGES

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

20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS Entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.

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's agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

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

23.0 DISPUTE RESOLUTION

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

23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.

23.3 Except as otherwise set forth herein including the provisions in Section 15.4, litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS's office contracting with the CLIENT is located. To the maximum extent allowed by law, the also parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

25.1 CLIENT or ECS may terminate this Agreement for breach, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

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

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

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

- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the Agreement.
- 30.0 CYBERSECURITY AND CONTROLLED UNCLASSIFIED INFORMATION (CUI)**
- 30.1 CLIENT shall not use, modify, disclose or transfer ECS data in any manner that may adversely affect the integrity, security, or confidentiality of the data. CLIENT shall implement and maintain appropriate administrative, physical, and technical safeguards to protect its information systems and data from cyberthreats including, but not limited to, unauthorized access, use, disclosure, modification, or destruction. CLIENT shall be solely responsible for the consequences of any cybersecurity incident, breach, or compromise (referred to herein as a "Cybersecurity Incident") impacting its systems, including those resulting in unauthorized access to any project data, client information, or confidential materials provided by ECS. CLIENT will not input, insert, use, share, or transmit any confidential information within any generative artificial intelligence application (i.e., ChatGPT, Bing Chat, Google Bard, etc.), whether external or internal.
- 30.2 CLIENT understands and agrees that under this contract it will not forward any Controlled, Unclassified Information (CUI), as that term is defined by the government, without first (a) notifying ECS at least three (3) working days prior to providing such data, and (b) ensuring that all such CUI data is marked as CUI prior to its delivery to ECS. CLIENT assumes all responsibility and liability for its failure to comply with this provision.
- 31.0 TITLES; ENTIRE AGREEMENT**
- 31.1 The titles used herein are for general reference only and are not part of the Terms.
- 31.2 These Terms together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS ("Agreement"). CLIENT acknowledges that all prior understandings and negotiations are superseded by this Agreement.
- 31.3 CLIENT and ECS agree that subsequent modifications to the Agreement shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 31.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 31.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and these Terms and their agreement to be fully bound to them. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.