



ECS Midwest, LLC

Proposal for Subsurface Exploration and
Geotechnical Engineering Services

Capron Elementary School – Proposed New Parking Lot
200 North Wooster Street
Capron, Illinois

ECS Proposal Number 16: 20476-GP

December 21, 2020



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Mr. Greg Stahler
Cashman Stahler group
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Lombard, IL 60148
E-mail: GStahler@cashmanstahler.com

ECS Proposal No. 16: 20476-GP

Reference: Proposal for Subsurface Exploration and Geotechnical Engineering
Capron Elementary School – Proposed New Parking Lot
200 North Wooster Street
Capron, Illinois

Dear Mr. Stahler:

As requested, ECS Midwest, LLC (ECS) is pleased to present the following lump sum proposal for providing subsurface exploration and geotechnical engineering services for the parking lot located at 200 North Wooster Street in Capron, Illinois.

In preparing this proposal, we have reviewed the RFP (Request for Proposal) email received from you on December 15, 2020 and the attached 'Capron School Geotech RFP JN.pdf' and Google Earth overlay document which includes the site location and the approximate requested boring locations. We have also reviewed the available geologic and geotechnical information in our files from the general project vicinity.

PROJECT BACKGROUND AND ADJACENT PROJECT EXPERIENCE

With over 20 years' experience in the Chicago metropolitan area, ECS enjoys a large database of subsurface information. Past project data is stored digitally and cross referenced to latitude/longitude coordinates for ease of retrieval, both at the proposal stage and during your specific project's exploration.

EXISTING SITE CONDITIONS

The parking lot is located at the site of the existing Capron Elementary School. At the time this proposal was written, a site-specific topographic survey was not available. Based on our review of available online resources (i.e., Google Earth), the existing road grades appear to range from about EL. +909 feet to EL. +919 feet above mean sea level (MSL). ***Grade elevations determined without a professional survey are approximate and should not be used in the design of structures and site amenities.***

PROJECT DESCRIPTION

ECS understands the project will consist of constructing a new parking lot and associated driveway. To explore the subsurface conditions within the proposed project limits, a subsurface exploration consisting of 10 test borings, each to a depth of approximately 7½ feet below the site surface, are requested to be performed.

If our understanding of the project is inaccurate or if the design changes, please contact ECS immediately so we can review and revise (if necessary) the proposed scope of services included in this proposal.

SCOPE OF SERVICES

Establishing Project/Service Goals and Benchmarks

ECS takes pride in providing our clients with great service. ECS will contact you upon award of the project to walk through the subsurface exploration process and determine what aspects of the project and our service is most important to you. This extra step will help ECS meet your needs and allow the project to run as smoothly as possible.

Layout/Coordination

The borings will be laid out in the field by an ECS' representative utilizing simple measuring techniques and/or GPS. After the borings have been laid out, ECS' subcontracted driller will contact JULIE (Illinois Public Utility One Call) to mark utilities in the vicinity of the boring locations. Note that JULIE typically only marks up to property lines. As such, ECS has included optional scope to subcontract a private utility locator to mark utilities at the project limits. Please see the [Optional Services](#) for additional details.

Soil Borings

We propose to perform the requested ten (10) test borings, each to the requested depth of 7½ feet below existing grade in the new pavement area. The borings will be extended to the requested depth below the existing ground surface unless auger refusal causes them to be terminated at a shallower depth. The soil borings will be located in the general locations shown on the provided boring locations plan. Our field exploration scope will also include the following:

- a. Locate soil borings in the field by referencing existing site features and available plans. ECS or its subcontracted driller will lay out the soil borings in the field.
- b. Mobilize a truck-mounted drilling rig to the site. *If weekend or off-hour drilling is required, additional fees will apply. Please refer to the [Fee](#) section for more details.*
- c. Perform Standard Penetration Test (SPT) tests at 2½ feet intervals at each location to the termination depth of the soil borings or until practical auger refusal, whichever comes first.

Upon completion of drilling operations, groundwater readings, if encountered, will be taken. The borings will be backfilled with spoils as appropriate. Excess spoils are currently planned to be left within the project limits. **Some damage to the ground surface may result from the drilling operations near the work areas and along ingress/egress pathways. ECS will attempt to reduce such damage, but no restoration**

other than backfilling the borings and patching the surface is included in our scope of services. ECS will not be responsible for repair of ground surface damage resulting from drilling operations.

Laboratory Services

Upon completion of drilling operations, the samples will be returned to our laboratory in Buffalo Grove, Illinois for further identification and testing. Our basic laboratory services will consist of the following items:

- a. Visual classification of the soil samples by a geotechnical engineer based on ASTM D2488 (visual-manual) procedure. .
- b. Calibrated hand penetrometer resistance to estimate unconfined compressive strength (select cohesive sample).
- c. Moisture content testing (each cohesive sample).
- d. Organic content testing on select samples, if appropriate.

Engineering Letter Report

Following completion of the field exploration and laboratory testing, ECS will prepare a geotechnical engineering letter report with the soil borings along with our findings and recommendations. The engineering report will be provided electronically and will include the following items:

- a. Observations from our site reconnaissance including current site conditions, surface drainage features, and surface topographic conditions.
- b. A review of the published geologic conditions and their relevance to your planned development.
- c. A subsurface characterization and a description of the field exploration and laboratory tests performed. Groundwater concerns relative to the planned construction will be summarized.
- d. Records of the field exploration (test boring logs) prepared in accordance with the local standard practice for geotechnical engineering. A boring location plan will be included, and the results of the laboratory tests will be plotted on the boring logs or included on a separate test report sheet.
- e. Recommendations for flexible pavements including pavement subgrade preparation, minimum pavement sections and pavement drainage recommendations based on assumed CBR values.
- f. Evaluation of the on-site soil characteristics encountered in the soil borings. Specifically, we will discuss the suitability of the on-site materials for reuse as engineered fill to support pavements. We will also include compaction recommendations and suitable material guidelines.
- g. Recommendations for additional testing and/or consultation that might be required to complete the geotechnical assessment and related engineering for this project.

ECS ADVANTAGES

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

- **Experience.** ECS has established an extensive subsurface database for all local geologies, allowing us to economically price subsurface explorations and offer the most appropriate techniques initially, not after the first phase of testing is complete.
- **Technology.** ECS utilizes Global Positioning System (GPS) services to accurately locate borings in the field. This technology allows us to control the responsiveness of our subsurface exploration and ultimately our report deadlines, versus relying on other firms to locate borings.
- **Expertise.** ECS has in-house geotechnical and geophysical testing. These services include vibration monitoring, pile driving analyzer (PDA) testing, pressuremeter testing, site classification for seismic design, seismic refraction (rock surface studies), ground penetrating radar (GPR), and electrical resistivity imaging (ERI) services.

OPTIONAL SERVICES

In addition to the scope of services described above, there are other services ECS is capable of providing which could benefit your project.

Private Utility Locator (Highly Recommended)

ECS requests that site utility plans and related documents be provided prior to the subsurface exploration to avoid damaging underground structures. As required by local regulations, our driller will contact a public utility location service to clear public utility lines at the Subject Property prior to the start of field exploration. However, if private utilities are located on the site please note that in most cases, municipal and utility representatives will not locate private utilities that are located on private property. Therefore, if requested, ECS can engage a private utility locator to identify on-site utilities in the immediate area of each soil boring location (within about a 5-foot radius) to reduce the potential of encountering utilities during drilling activities.

*Contracting a private utility locator service is not a guarantee that all utilities within a work site will be identified, but a service that is offered to lower the risk of the owner/client. ECS and our clients have had great success in avoiding utility contact by augmenting the public utility location services with a private locator service. Private locator services can identify utility alignments that incorporate significant iron content in the conduit materials. However, private utilities possessing the higher likelihood of not being easily identifiable, beyond the point of distribution, include all utilities not containing significant ferrous (iron) content (examples would include but not be limited to most sanitary sewer alignments, copper or PVC water lines, fiber optic lines without tracer ribbons, copper electric lines with no surface exposure, drainage tiles/pipes, and irrigation lines). The cost of engaging a private locator would be an additional **\$750**. [If you would like ECS to perform this optional service, please indicate so on the attached Proposal Acceptance sheet.]*

CCDD Testing

If requested, we will perform CCDD testing on a sample obtained from one of the soil borings. Illinois Public Act 96-1416 amended the Environmental Protection Act regarding the management of Clean Construction and Demolition Debris (CCDD). The law has created a state tipping fee for CCDD disposal and provides additional standards for materials being accepted at CCDD facilities and cleans soil-only fill sites. For most sites, prior to landfill acceptance of any soils generated from construction activities, certification from a licensed professional engineer or geologist that the soil is uncontaminated is required.

In an effort to determine what landfill (CCDD or non-CCDD) will be able to accept soils generated from future construction activities and to assist you in determining approximate costs for future soil disposal activities, soil samples obtained during the geotechnical exploration exhibiting the greatest potential for possible impacts (visual, olfactory, PID readings, etc.) will be analyzed. Note that pre-sampling soils for compliance with the law will also assist in accommodating same day “dig and haul activities” and should reduce overall costs and the potential for delays associated with soil disposal activities. The cost for the collection and analysis of one sample would be **\$1,800**. Additional sampling can be done for an additional fee of **\$1,200** per sample. If the soil is determined to be non-impacted, ECS will provide the IEPA Uncontaminated Soil Certification Form (LPC-663) and certification by our P.E. that the soil is not contaminated. Please note that if the soils are found to be impacted additional analyses (specific to the appropriate landfill that can accept impacted soils) may be required prior to acceptance. Additionally, it should be noted that the landfill (CCDD or other) will make the final determination on whether or not they will choose to accept the waste and may request additional analysis prior to acceptance. We assume the CCDD samples will be collected during the performance of the soil borings. If an additional trip is required, additional fees will apply. [If you would like ECS to perform this optional service, please indicate so on the attached Proposal Acceptance sheet.]

FEE

We have provided a total cost based on the soil boring scope of 10 soil borings to a depths of 7½ feet below existing grade and base scope of services outlined above. The cost for the scope of services described in this proposal is as noted below:

- **Geotechnical Base Scope** **\$ 4,400***

* ECS' engineering service fee assumed the use of a truck-mounted drill rig and have included a typical, one-time, short, routine follow-up consult after the initial delivery is submitted. If an ATV drill rig is needed, additional fees will apply. ECS will invoice additional consulting, beyond routine requests, on a Time and Material basis. ECS assumes that site work can be completed regular business hours on a week-day. **An additional fee will apply if weekend and/or off-hour drilling is required.**

Optional/Additional Services

ECS can provide the following additional services for the fees detailed below.

- Private Utility Locator: \$ 750
- CCDD Testing (first sample) \$ 1,800
- Additional CCDD Testing \$ 1,200/sample

Our fee is based upon our assumptions detailed in this proposal. If additional services are requested or required based on differing site conditions, we will contact your office (or assigned representative) for verbal and written authorization for additional services. Additional services will be priced as a separate mobilization. The cost of this service will be provided at a later date, if deemed necessary.

SCHEDULE

In preparing this proposal, we have assumed that the client will assist in the coordination of our access to the site with the current site owners/occupants. After authorization to proceed and notification that the appropriate on-site personnel have been informed, our schedule would be as follows:

TASK	BUSINESS DAYS, #			
Mobilize SPT Boring Equipment	4 to 5			
Field Operations		1		
Soil Laboratory Testing			1 to 2	
Report Delivery				4 to 5

The typical turnaround time would be about 2 to 3 weeks. The above values are estimates and are dependent on weather conditions, utility clearance, site access and equipment/crews availability.

CLOSING

If other items are required because of unexpected field conditions or because of a request for additional services, they would be invoiced in accordance with our current Fee Schedule. Before modifying or expanding the extent of our exploration program, you would be informed of our intentions for both your review and authorization. Our "Terms and Conditions of Service," which are included as an attachment to this letter, is an integral part of our proposal. These conditions represent the current recommendations of the GeoProfessional Business Association (GBA), the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing and returning the enclosed copy to us. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

Respectfully submitted,

ECS MIDWEST, LLC

Saurabh Saawant
Saurabh Saawant
Geotechnical Staff Project Manager
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Kalyan S. Chandhuri
Kalyan S. Chandhuri, M.B.A, P.E.
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Enclosures: Proposal Acceptance Sheet
 Terms and Conditions of Service

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PROPOSAL ACCEPTANCE PAGE

Proposal No.: 16: 20476-GP
 Project: Capron Elementary School – Proposed New Parking Lot
 Location: 200 North Wooster Street, Capron, Illinois

Client Signature: _____ Date: _____

Base Scope of Services

Geotechnical Scope (\$4,400):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Optional Services

Private Utility Locator (\$750):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
CCDD Testing (first sample) (\$1,800):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Additional CCDD Testing (\$1,200/each additional sample):	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Please complete this page and return one copy of this proposal to ECS to indicate acceptance of this proposal and to initiate work on the above-referenced project. The Client’s signature above also indicates that he/she has read or has had the opportunity to read the accompanying Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service.

BILLING INFORMATION

(Please Print or Type)

Invoice Delivery Preference: Electronic (email) Hardcopy (USPS)

Name of Client Company: _____

Name of Client Contact Person: _____

Title: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Person to Receive Invoice: _____

Title: _____

Email Address: _____

Billing Address: _____

Telephone Number: _____

Client Project/Account Number: _____

Special Conditions for Invoice: _____

ECS offers a full array of services to assist you with *all* phases of your project, including but not limited to:

<i>Phase I, II and III Environmental Site Assessments</i>	<i>Third Party Mechanical, Electrical, Plumbing Inspections Services</i>	<i>Building Envelope, Roofing, and Waterproofing Inspection and Consultation</i>
<i>Archaeological Assessments</i>	<i>Geotechnical Engineering Services</i>	<i>Pre- and Post-Construction Condition Assessments</i>
<i>Wetlands Delineations</i>	<i>Construction Materials Testing</i>	<i>Specialty Materials and Forensics Testing</i>
<i>Asbestos/Lead Paint Services</i>	<i>Septic/Drainfield Design Services</i>	
<i>Indoor Air Quality Mold Services</i>	<i>LEED® Consulting Services</i>	

Please indicate any of the services you are interested in and a member of the ECS team will contact you to discuss how we can be of service to your project.



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 shall form the Agreement between ECS and Client.

- 1.0 **INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, 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 contractors and consultants. 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 and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.
 - 3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.
 - 3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.
 - 3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.
- 4.0 **CLIENT DISCLOSURES**
 - 4.1 Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) 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 to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 **INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.**6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 **RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
 - 7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, 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 harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

- 7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.
 - 7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.
 - 7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.
- 8.0 **UNDERGROUND UTILITIES**
 - 8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.
 - 8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.
 - 8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor'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 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 process by-products in accordance with applicable laws and regulations.
 - 10.0 **ENVIRONMENTAL RISKS**
 - 10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
 - 10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.
 - 10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract 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 the Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, it's licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties 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, trenching, 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 contractor or consultant or any of their subcontractors or subconsultants.
- 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 contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time 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 basis.

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

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms 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 shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.
- 17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1 **CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.**
 - 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
 - 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$50,000, or two (2) times the total fee for the services rendered, whichever is greater.
- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.
- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.

19.0 INDEMNIFICATION

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

20.0 CONSEQUENTIAL DAMAGES

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

21.0 SOURCES OF RECOVERY

- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS Entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, 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' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder.

In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

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

23.0 DISPUTE RESOLUTION

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

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

- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

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

25.0 TERMINATION

- 25.1 CLIENT or ECS may terminate this agreement for breach of these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

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

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

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

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

30.0 TITLES; ENTIRE AGREEMENT

- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. 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.