

ATTACHMENT NO. X-E: Property Survey and Soil Boring

Potential motion: Move to approve soil borings and a survey for the new Capron property

Recommended action: Approve the motion.

Once the structures are removed from the property, the district will need to get soil borings done to help with planning for the right foundation for pavement. The district will also need to have the area surveyed. This is a necessary step to aid in the design work of the parking lot and for water drainage.



## **SIGHT ON SOLUTIONS, INC.**

Land Surveying, 3D Mapping and Construction Staking Services  
*"We Get corners other people Cut!"*

March 27, 2020 (Revised December 17, 2020)

Mr. Michael Renner  
Eriksson Engineering Associates, Ltd.  
145 Commerce Drive, Suite A  
Grayslake, Illinois 60030

Re: Capron Elementary School 200 N. Wooster St., 230 N. Wooster St. and 410 W. Main St., Capron, IL

Dear Mr. Renner:

Sight On Solutions, Inc. (SOS) appreciates the opportunity to submit a proposal to provide the following surveying services to Eriksson Engineering Associates, Ltd. (Client), as agent for owner, of the subject property in connection with Capron Elementary School, located at 200 N. Wooster Street and 230 N. Wooster Street, in Capron, Illinois and identified by the Boone County Assessor's Office as Parcel Identification Numbers (P.I.N.s): 04-03-400-024, 04-03-400-027, 04-10-226-013 and 04-10-226-017. SOS offers to provide the following services for the fees detailed below:

### **Option #1 (assumed each task completed separately):**

#### **Boundary Survey**

Field measurement and analysis of the subject property identified above and outlined in yellow on the attached survey limits exhibit for use in the preparation of the Topographic Survey detailed below. This survey will be completed in accordance with the Minimum Standards of Practice as indicated by the Illinois Professional Land Surveyors Act of 1989 (225 ILCS330, Part 1270, Section 1270.56.b as amended). The Boundary Survey will indicate easements and restrictions as identified on the Final Plat of Subdivision (if any), however, restrictions, easements, setbacks or other encumbrances disclosed on a current title commitment, included with the preparation of an ALTA/NSPS Land Title Survey showing matters of title, along with unrecorded encumbrances on the property, will not be shown.

Sub-Total: \$4,300.00

#### **Topographic Survey (Area in blue)**

Preparation of a Topographic Survey of the subject property in accordance with the Minimum Standards of Practice as indicated by the Illinois Professional Land Surveyors Act of 1989 (225 ILCS330, Part 1270, Section 1270.56.f as amended). The Topographic Survey area shall include trees 6" in diameter or larger and that part of the subject property outlined in blue on the attached survey limits exhibit. Boundary lines shall only be shown if the Boundary Survey detailed above is completed by SOS. The Topographic Survey will reference a benchmark provided and a site benchmark shall be indicated by SOS for future use in construction of improvements. Location of buried utilities (i.e., gas, telephone, electric, cable TV, etc.), will not be shown, except where identifiable utility markers are observed at the time of the survey that clearly identify the utility configuration in a given area.

Sub Total: \$5,300.00



**Topographic Survey (Areas in red)**

Preparation of a Topographic Survey of the subject property in accordance with the Minimum Standards of Practice as indicated by the Illinois Professional Land Surveyors Act of 1989 (225 ILCS330, Part 1270, Section 1270.56.f as amended) The Topographic Survey area shall include trees 6" in diameter or larger and that part of the subject property outlined in red on the attached survey limits exhibit. Boundary lines shall only be shown if the Boundary Survey detailed above is completed by SOS. The Topographic Survey will reference a benchmark provided and a site benchmark shall be indicated by SOS for future use in construction of improvements. Location of buried utilities (i.e., gas, telephone, electric, cable TV, etc.), will not be shown, except where identifiable utility markers are observed at the time of the survey that clearly identify the utility configuration in a given area.

Sub Total: \$2,600.00

**Topographic Survey (Areas in cyan)**

Preparation of a Topographic Survey of the subject property in accordance with the Minimum Standards of Practice as indicated by the Illinois Professional Land Surveyors Act of 1989 (225 ILCS330, Part 1270, Section 1270.56.f as amended) The Topographic Survey area shall include trees 6" in diameter or larger in that part of the subject and adjacent property outlined in cyan on the attached survey limits exhibit. Boundary lines shall only be shown if the Boundary Survey detailed above is completed by SOS. The Topographic Survey will reference a benchmark provided and a site benchmark shall be indicated by SOS for future use in construction of improvements. Location of buried utilities (i.e., gas, telephone, electric, cable TV, etc.), will not be shown, except where identifiable utility markers are observed at the time of the survey that clearly identify the utility configuration in a given area.

Sub Total: \$1,750.00

**Option #2 (assuming each task in Option #1 completed simultaneously)**

**Boundary & Topographic Survey**

Prepare a single Boundary & Topographic Survey of the subject property in accordance with the Minimum Standards of Practice as indicated by the Illinois Professional Land Surveyors Act of 1989 (225 ILCS330, Part 1270, Sections 1270.56b and 1270.56.f as amended). The Boundary and Topographic Survey will indicate easements and restrictions as identified on the Final Plat of Subdivision (if any), however, restrictions, easements, setbacks or other encumbrances disclosed on a current title commitment, included with the preparation of an ALTA/NSPS Land Title Survey showing matters of title, along with unrecorded encumbrances on the property, will not be shown. The Topographic Survey area shall include trees 6" in diameter or larger in that part of the subject and adjacent property outlined in blue, red and cyan on the attached survey limits exhibit simultaneously. Location of buried utilities (i.e., gas, telephone, electric, cable TV, etc.), will be shown only where identifiable utility markers or structures are observed at the time of the survey that clearly identify the utility configuration in a given area.

Sub-Total: \$10,800.00

**Underground Utility Mark Location**

SOS, Inc will coordinate a private locate and survey the locations of the flags, paint marks, etc., if required, on an hourly basis if utility work is not completed at the time the Topographic Survey detailed above is completed.

Sub-Total: Hourly



This agreement is made and entered into between Sight On Solutions, Inc. ("Surveyor") and Eriksson Engineering Associates, Ltd. ("Client") according to the following Terms and Conditions:

Terms and Conditions (1-16):

1. Services Performed By Surveyor. Surveyor agrees to perform the services set forth and attached hereto and incorporated herein by this reference ("services").
2. Compensation by Client. Client agrees to compensate Surveyor upon completion and delivery of services and products in the amounts detailed herein.
3. Payments:
  - a. Invoicing: All fees and other charges attributable to this Agreement shall be invoiced by Surveyor at the time of final product delivery and shall be due and payable by Client within thirty (30) days to avoid Late Charges of up to 15% each month, as detailed below:
    - i. Late Charges accumulate on a thirty (30) day basis if not paid within thirty (30) days from the date of the invoice, detailed as follows:
      1. a 7.5% Late Charge will be added to the total amount due when payment is not received within thirty (30) days from the date of the invoice; a statement will be mailed to you reflecting this Late Charge.
      2. a 10% Late Charge will be added to the total amount due when payment is not received within sixty (60) days from the date of the invoice, including prior Late Charges; a statement will be mailed to you reflecting this Late Charge.
      3. a 15% Late Charge will be added to the total amount due when payment is not received within ninety (90) days from the date of the invoice, including prior Late Charges; a statement will be mailed to you reflecting this Late Charge. Late Charges shall continue at 15% each month until paid in full.
    - b. Additional Services. If services not specified in this Agreement are provided at Client's request, Client shall timely pay for all such services as extra work per terms, and hourly rates, set forth herein.
    - c. Reimbursable Costs. Any additional reimbursable fees incurred by Surveyor such as costs for county records, materials used for staking, transportation expenses, application fees, printing and reproduction costs, shipping fees, and County recorded document fees, if applicable, shall be invoiced with a 10% handling fee.
4. Documents Provided By Client. Client agrees to provide, or have provided, to the Surveyor any and all documents necessary to identify the ownership, location and condition of the property to be surveyed, including, but not limited to, deeds, maps, title information, and permits; and to obtain for Surveyor, if necessary, the authorization of the owner and the adjoining property owners, to enter upon the property for the purpose of conducting Surveyor's work thereon.
5. Ownership of Work Product. Client acknowledges that all original papers, documents, maps, surveys, and other work product of Surveyor, and copies thereof, produced by Surveyor pursuant to this Agreement, except documents which are required to be filed with public agencies, shall remain the property of Surveyor and the Surveyor has the unrestricted right to use any such work product for any purpose whatsoever without the consent of Client. Client further acknowledges that Client's right to utilize the services and work product performed pursuant to this Agreement will continue only so long as Client is not in default pursuant to the terms and conditions of this Agreement and Client has performed all obligations under this Agreement.
6. Use of Work Product. Client agrees that the work product prepared by Surveyor may not be altered or reproduced in any way nor used on any other project or for any purpose other than as specifically authorized herein by Surveyor.
7. Copyright. The parties agree that all protections of the United States and Illinois copyright laws shall be applicable to the work product to the benefit of Surveyor, whether or not such work product actually is so copyrighted, and without regard to whether or not such copyright actually applies to such work product.
8. Suspension or Termination of Performance. In addition to any other rights Surveyor may have for default of Client, if Client fails to pay Surveyor after service, product and invoices are rendered, Client agrees Surveyor shall have the right to consider such default in payment a material breach of this Agreement, and, upon notice, the duties, obligations, and responsibilities of Surveyor under this Agreement may be suspended or terminated at Surveyor's sole discretion.
9. Delays. Surveyor is not responsible for delays caused by activities or factors beyond Surveyor's control, including but not limited to, delays caused by strikes, lockouts, work slowdowns or stoppages, accidents, acts of nature, failure of Client to timely furnish information or approve or disapprove Surveyor's work, or faulty performance by Client or others, including contractors and governmental agencies.
10. Indemnity – To the fullest extent permitted by law, the Client shall waive any right of contribution and shall indemnify and hold harmless Surveyor, its agents, employees and consultants from and against all claims, damages, losses and expenses, including but not limited to, attorneys' fees, arising out of or resulting from or in connection with the performance of the work which results from Client's negligence or the negligence of Client's agents. This indemnity shall not require the Client to indemnify Surveyor for the negligent acts of Surveyor or its agents.
11. Limit of Liability. Sight On Solutions, Inc.'s liability on any claim brought forth against Surveyor or Surveyor's Sub-Consultants (if any) shall be limited to the total amount of contracted services contained herein, performed up to the date of the claim.
12. Attorney's Fees. If Client or Surveyor is a prevailing party in any legal proceeding brought under or with relation to this Agreement, such party shall be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.
13. Arbitration. At Surveyor's option, all claims, disputes, and other matters in question arising out of or relating to this Agreement shall be submitted to binding arbitration, where at least one arbitrator is an Illinois licensed Professional Land Surveyor practicing in the area of the subject property, and the parties hereto agree to execute and/or obtain the execution of all documents as may be necessary to submit such matters to arbitration. Unless otherwise agreed by the parties, said arbitration shall be in accordance with the rules and regulations of the American Arbitration Association.
14. Contractual Lien to Secure Payment. Client grants to Surveyor a contractual lien in addition to all constitutional, statutory, and equitable liens that may exist, on the property and all improvements thereon to secure payment of all compensation due Surveyor by Client as provided herein. Client grants Surveyor the authority and right to file a copy of this Agreement in the Records of the County where the property is located to give notice of Surveyor's lien rights.
15. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of Illinois.
16. Entire Agreement of Parties. This contract contains the entire agreement of the parties and cannot be changed except by their written agreement.



We will schedule the field work as soon as we receive a signed copy of this contract. Thank you again for the opportunity to submit this proposal. Should you have any questions, please do not hesitate to contact us.

Yours truly,

**Sight On Solutions, Inc.**

Michael S. Ulibarri, PLS, President

Signature of Approval for **Eriksson Engineering Associates, Ltd.**

Signed: \_\_\_\_\_ date: \_\_\_\_\_

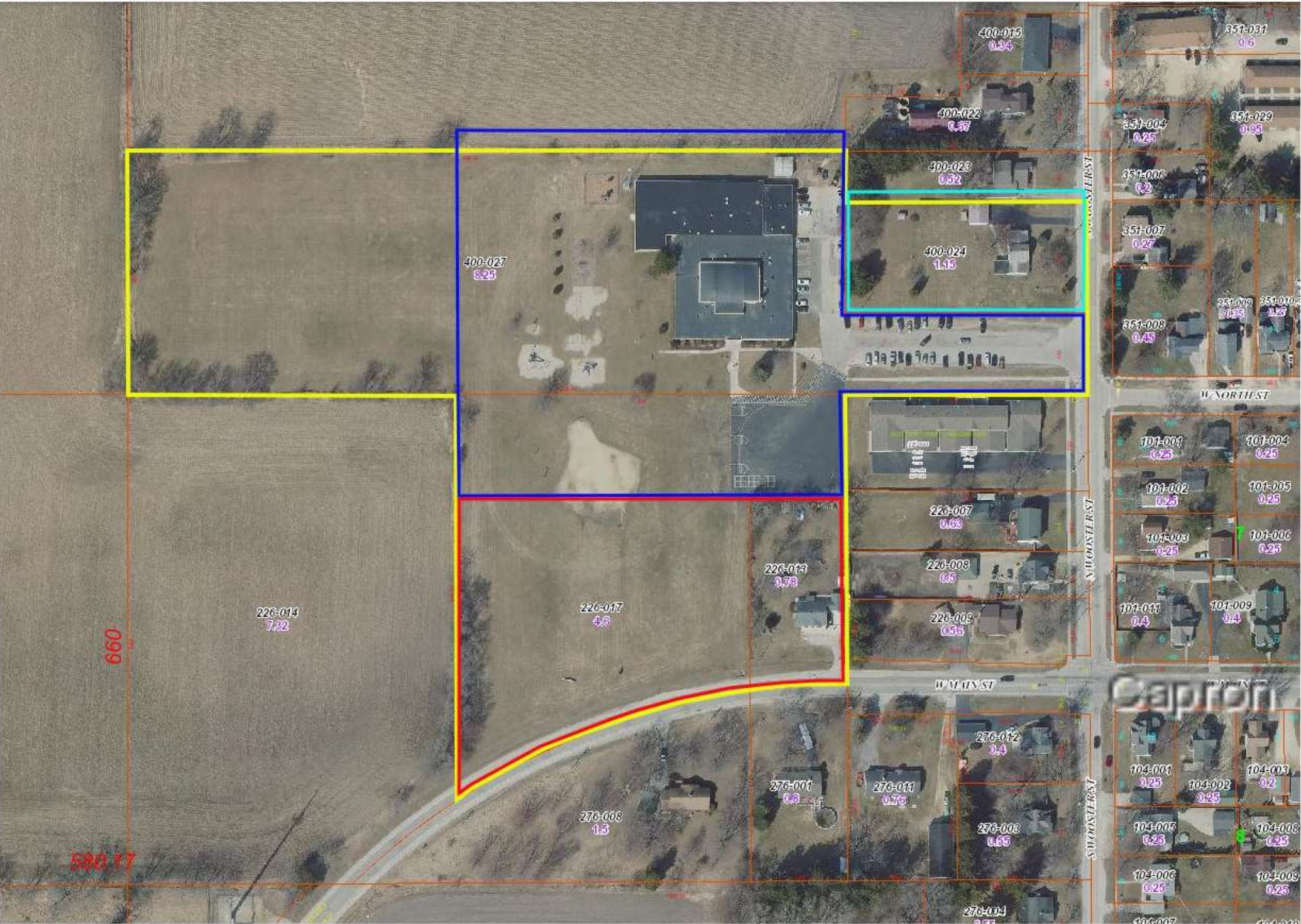
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Services not specifically included in the surveying services above, including but not limited to additional time necessary to complete services under unforeseen site conditions that adversely affect the normal operating procedures of Sight On Solutions on this date, such as snow cover, high water levels or other unforeseen condition brought forth by an act of nature or other means, shall be performed by Sight On Solutions, Inc. as an "Additional Service", if authorized by the client. Such additional services shall be provided either for an agreed upon Lump Sum Fee under a separate contract or on a Time and Material Basis, upon authorization to proceed and subject to the following rates:

**2020 TIME AND MATERIAL RATES**

<b><u>CATEGORY</u></b>	<b><u>HOURLY RATES</u></b>
Professional Land Surveyor (PLS)	\$120.00
Survey Project Manager	\$100.00
Survey Technician	\$95.00
Survey CAD Technician	\$85.00
Records/Title Research Technician	\$75.00
Survey Field Crew	\$175.00
Expert Testimony & Depositions (PLS)	\$225.00
Administration/Clerical	\$65.00





**SURVEY LIMITS EXHIBIT**





# 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



**ECS MIDWEST, LLC**

Geotechnical • Construction Materials • Environmental • Facilities

*"Setting the Standard for Service"*

December 21, 2020

Mr. Greg Stahler  
Cashman Stahler group  
1910 South Highland Avenue, Suite 310  
Lombard, IL 60148  
E-mail: [GStahler@cashmanstahler.com](mailto: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*  
Geotechnical Staff Project Manager  
[SSaawant@ecslimited.com](mailto:SSaawant@ecslimited.com)



*Kalyan S. Chandhuri, M.B.A, P.E.*  
Geotechnical Department Manager  
[KChandhuri@ecslimited.com](mailto:KChandhuri@ecslimited.com)

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



2753 W. 31st Street | Chicago, IL 60608  
Tel: 773-722-9200 | Fax: 773-722-9201 | [pioneerEES.com](http://pioneerEES.com)

December 18, 2020

Cashman Stahler Group  
1910 S. Highland Avenue, Suite 310  
Lombard, IL 60148  
ATTN: Greg Stahler

Re: Geotechnical Investigation Proposal (Revised)  
Proposed Pavement Improvements  
Capron Elementary School  
200 N. Wooster Street  
Capron, Illinois  
Pioneer Proposal No. 16873

Dear Mr. Stahler:

Pioneer Engineering & Environmental Services, LLC (Pioneer) is pleased to submit this proposal to provide Geotechnical Investigation Services for the planned pavement improvements at the Capron Elementary School in Capron, Illinois. The purpose of the investigation is to provide information on the soil properties at the site in support of the pavement design and construction. Presented below is our understanding of the project information, a proposed scope of service with lump sum fee, and our anticipated schedule to complete the work.

### **PROJECT INFORMATION**

The Project Site is the Capron Elementary School located at 200 N. Wooster Street in Capron, Illinois. The school campus is located approximately 300 feet west of N. Wooster Street near the intersection of W. North Street. The school building is bordered by a small parking area immediately east of the school and a larger parking area along the access road connecting the school to N. Wooster Street. A paved playground is located southeast of the school.

Current plans include the reconstruction of the existing parking lots. Consideration is also being given to expanding the playground area to the north and the parking area nearest the school eastward into the western part of a residential parcel.

### **SCOPE OF WORK**

As requested, Pioneer proposes to perform ten (10) borings for the proposed parking lot improvements. Each boring will be advanced to a depth of 7.5 feet below surface grade. This proposal also includes an Additive Alternate cost for a private utility locator to mark any existing utilities within proximity of the boring locations.

The following is the proposed scope of work.

- 1) Pioneer will notify the joint utility locator service (i.e. JULIE/Chicago 811) for public utility identification prior to performing field-sampling activities. The boring locations will also be cleared by a private utility locator if the Additive Alternate is chosen.
- 2) The boring locations will be laid out with a measuring tape relative to building and property corners.
- 3) The field work will include the following:

- The borings will be made with an ATV-mounted drill rig using hollow stem augers to advance the borehole. Samples will be taken at 2.5-foot intervals to a depth of 7.5 feet using the split-barrel sampling procedures in accordance with ASTM D-1586.
  - Soil samples will be retrieved in the field by a Pioneer Field Technician and logged/classified according to their predominant geological characteristics. In addition, the groundwater level will be measured during and after completion of borings.
  - After completion of sampling activity, the soil borings will be backfilled with soil cuttings mixed with bentonite and patched with asphalt at the surface. Pioneer will attempt to minimize damage to the ground surface, but no restoration other than backfilling and patching the soil boring is included. Even though the boring's backfill will be compacted, some settlement may occur due to the dead weight of the soil.
  - This proposal assumes extra soil cuttings, if generated, will remain on site after the boreholes are backfilled.
- 4) At the conclusion of Pioneer's field and laboratory work, the data will be analyzed by an experienced geotechnical engineer and a report of conclusions and recommendations will be prepared. The report will include the following:
- A summary of field activities and laboratory test procedures.
  - Results of testing conducted and our conclusions.
  - Pavement design recommendations.
  - Recommended construction procedures.

#### **FEES/SCHEDULE**

Based on our understanding of the project requirements, we will provide Geotechnical Investigation Services as described in this proposal for the following lump sum fees:

- Geotechnical Investigation: \$ 4,800.00/Lump Sum
- Private Utility Locator: \$ 1,000.00/Lump Sum (Additive Alternate)

Please allow approximately three weeks for final project completion from the date of signed proposal acceptance.

The following additional list of terms and conditions are incorporated into the attached Standard Terms and Conditions.

- Pioneer will not be held responsible for any damage to utilities not previously identified by the site contact, prospective purchaser, property owner, or the joint utility identification service, unless damage is due to Pioneer's negligence.
- After submittal of our final report Pioneer is available to provide calculations, and review recommendations and confer with the design team as additional project design and specification information is available. These services are beyond the scope of this proposal, and would be invoiced on a unit rate basis.
- A PDF copy of the geotechnical report will be provided to the Client. Pioneer understands that the Client may reproduce Pioneer's Geotechnical Services Report without modifications for distribution in connection with the proposed development.



Geotechnical Investigation Proposal (Revised)  
Capron Elementary School  
200 N. Wooster Street  
Capron, Illinois  
Pioneer Proposal No. 16873  
December 18, 2020



### **AUTHORIZATION**

To authorize us to proceed with the proposed exploration, please sign the attached Proposal Acceptance/Acknowledgement Sheet and return the copy to us. Any exceptions to this proposal or special requirements not covered in the proposal should be indicated on the Proposal Acceptance/Acknowledgement Sheet. Please note that the Terms and Conditions are part of this proposal. Upon our receipt of one executed copy of the attached Proposal Acceptance/Acknowledgement Sheet, Pioneer will schedule and complete the project.

### **CLOSING**

We appreciate the opportunity to provide this proposal for Geotechnical Investigation Services for this project. We are committed to providing the expertise you require for successful and timely completion of this project. If you have any questions concerning these services or require adjustments to our approach or schedule, please contact us.

Respectfully Submitted,

**PIONEER ENGINEERING & ENVIRONMENTAL SERVICES, LLC**

A handwritten signature in black ink, appearing to read "R. Gay".

Robert L. Gay, P.E.  
Sr. Geotechnical Engineer

Enclosures:      Proposal/Agreement Acceptance Acknowledgement  
                         Proposed Boring Location  
                         Agreement for Services & General Terms and Conditions

**Acceptance of Proposal and General Terms and Conditions**  
**by and between Client and Pioneer Engineering & Environmental Services, LLC ("Pioneer")**

Client, by its authorized representative, hereby acknowledges that the attached proposal and General Terms and Conditions, together constitute the entire agreement ("Agreement") between Client and Pioneer.

The Agreement may not be supplemented, modified, superseded or otherwise altered, by any terms or conditions contained in any purchase order, requisition, notice of authorization to proceed, pre-printed form or other document of Client.

**PROPOSAL NO.:** 16873

**DATED:** 12/18/2020

**REGARDING SERVICES PROVIDED:** Geotechnical Investigations

**CLIENT**

Cashman Stahler Group, Inc.  
1910 S. Highland Avenue  
Suite 310  
Lombard, IL 60148

**SITE LOCATION**

200 N. Wooster Street  
Capron, Illinois

**Proposal Accepted By Client Representative:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**Property Owner Identification:**

Company: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

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**Invoices for Payment May Be Sent To:**

Company: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**Payment Terms:**

**Estimated Total:** \$4,800.00  
**Required Advance Payment:** \$0.00

**Special Instructions:**

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## PROPOSAL/AGREEMENT ACCEPTANCE ACKNOWLEDGEMENT

Client, by its authorized representative, hereby acknowledges that the below described proposal and the Pioneer Engineering & Environmental Services, LLC Agreement for Services and General Terms and Conditions attachment constitutes the entire agreement between parties and may not be supplemented, modified, superseded or otherwise altered, by any terms or conditions contained in any purchase order, requisition, notice of authorization to proceed, pre-printed form or other document of Client.

**PROPOSAL NO.:** 16873-Add. Alt.

**JOB TYPE:** Private Utility Locate

### CLIENT

Cashman Stahler Group  
1910 S. Highland Avenue, Suite 310  
Lombard, IL 60148

### SITE LOCATION

Proposed Pavement Improvements  
Capron Elementary School  
200 N. Wooster Street  
Capron, Illinois

### Proposal Accepted By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### For Payment of Charges:

Company: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

### Property Owner Identification:

Company: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**Payment Terms:** Net 30 Days

**Estimated Total:** \$ 1,000.00

**Required Advance  
Payment:** None

**Special Instructions:** \_\_\_\_\_

# **PIONEER ENGINEERING & ENVIRONMENTAL SERVICES, LLC**

## **GENERAL TERMS AND CONDITIONS**

**WHEREAS** the below-signed client ("Client") wishes to retain the engineering and environmental services of Pioneer Engineering & Environmental Services, LLC ("Pioneer"), the parties hereby set forth in this agreement ("Agreement") the services to be rendered and the general terms and conditions relating to those services:

### **1. PROPOSAL PROCESS**

Pioneer will, as it deems necessary, evaluate the subject property or properties, consult with client, and consult with other third parties, in order to create written proposal setting out the specific work it intends to perform. Client will then review the proposal and sign said proposal if it accepts the same and then return it to Pioneer. Pioneer will not commence any work until it receives a signed and accepted proposal from Client.

### **2. ESTIMATES OF COST**

Pioneer's estimates of probable total costs as set forth in any project proposal provided as part of the services rendered pursuant to this Agreement, are made on the basis of Pioneer's knowledge, experience and judgment as an experienced and qualified professional familiar with the environmental consulting and engineering industry. Costs may vary from cost estimates as established in project proposals, bids or other projected project costs as established by Pioneer, and Client agrees to pay any and all final costs of any project even if those costs are not identical to the estimates contained in a proposal.

### **3. CHANGES TO THE SERVICES**

Client may direct changes to the services to be provided pursuant to a proposal. Upon notification of such direction, Pioneer shall prepare an estimate of the additional or reduced cost and time required, if any, to perform the change. Upon mutual agreement, Pioneer shall perform the change at a schedule and price in accordance with the agreed upon change estimate.

### **4. INCORPORATION OF TERMS & CONDITIONS**

All proposals and estimates submitted by Pioneer to Client following the execution of this Agreement shall incorporate the terms and conditions of this Agreement even if said proposal or estimate makes no specific reference to this Agreement.

### **5. ACCESS TO PROPERTY**

Client shall provide Pioneer and its agents and their equipment access to the project site(s) at such times as may reasonably be required by Pioneer. Client hereby warrants and represents that it has full and absolute right and authority to permit Pioneer on the subject property to perform the services set forth in this Agreement and in any subsequent proposal.

### **6. INFORMATION ABOUT PROPERTY**

Client shall provide Pioneer with all information that may be reasonably available to Client regarding the project site and the services to be performed pursuant to this Agreement, including any and all information regarding hazardous materials and hazardous conditions at the project site.

### **7. SAMPLING OR TEST LOCATION**

Unless otherwise stated, the fees in a proposal do not include costs associated with surveying of the site for the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on sketches are based upon information furnished by others or estimates made in the field by our representatives. Such dimensions and depths of elevations should be considered as approximations unless otherwise stated. If Client specifies the test or boring location, Pioneer reserves the right to deviate a reasonable distance from the location specified. Pioneer reserves the right to terminate this Agreement if site conditions prevent drilling at or near the designated boring locations and these conditions were not revealed to Pioneer prior to submitting a proposal. If, in order to complete the borings to their designated depths, a re-drilling is necessitated by encountering impenetrable subsurface objects, all work will be charged for at the appropriate rates in the fee schedule.

### **8. FAILURE TO ENCOUNTER HAZARDOUS MATERIALS**

Client understands and acknowledges that failure to discover hazardous materials does not guarantee that hazardous materials do not exist at the site. Furthermore, a non-contaminated site may later become contaminated. Accordingly, Client waives any claim against

Pioneer, and agrees to defend, indemnify and save Pioneer harmless from any direct or indirect claims or liability for injury or loss, including attorney fees and costs, arising from Pioneer's failure to detect the presence of hazardous materials, unless, and only to the extent that, the failure to disclose hazardous materials was due to Pioneer's negligence. Client also agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to the subject matter of this paragraph, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees.

### **9. VARYING ENVIRONMENTAL CONDITIONS**

Client recognizes that subsurface conditions, including subsurface contamination, may vary from those encountered at the locations where the borings, monitoring wells, surveys, or explorations are made by Pioneer and that the data interpretations and recommendations of Pioneer's personnel are based solely on the information available to them. Pioneer shall not be responsible for the interpretation by others of the information developed pursuant to a proposal.

### **10. CHANGED CONDITIONS**

During the performance of services pursuant to this Agreement, Pioneer shall advise the Client, as soon as practically possible, about any Changed Conditions (as hereinafter defined). Changed Conditions shall include the discovery of any hazardous waste or substance, underground obstruction, underground utilities or other latent obstruction to the performance of Pioneer's services that were not the subject of the services defined in any project proposal. If practicable, Pioneer shall prepare an estimate of the additional time and cost required to respond to the Changed Condition. If Client is unwilling to accept the terms of this estimate, Pioneer shall have an absolute right to terminate this Agreement and the Client will remunerate Pioneer for services rendered and costs incurred up to the time of termination, as well as those associated with termination. If Pioneer is unable to practically advise Client of the Changed Conditions prior to responding to them, Pioneer may, at its sole option, continue with the services and Client shall be responsible for any additional costs and expenses incurred by Pioneer.

### **11. AQUIFER CONTAMINATION**

Client waives any claim against Pioneer, and agrees to defend, indemnify and save Pioneer harmless from any claim or liability for injury or loss which may arise as a result of cross-contamination caused by drilling and sampling unless due to Pioneer's negligence. Client also agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to the subject matter of this paragraph, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees. Client further agrees to compensate Pioneer for costs, time and expenses that may be necessary for remedial action required due to aquifer contamination unless said contamination is due to Pioneer's negligence.

### **12. SITE WORK**

Pioneer will take all reasonable precautions to avoid any damage to the site from the activities of its crews or equipment. However, unavoidable damage caused in the execution of the work such as tire rutting, cutting and splicing of fences, drilling through pavements, etc. will not be restored unless otherwise stated in this Agreement.

### **13. UTILITIES**

In the execution of any subsurface exploration Pioneer will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities. However, Pioneer shall not be responsible for any damage to utilities not identified by Client or the utility identification services (such as 'JULIE'). The Client agrees to indemnify and hold Pioneer harmless for any damages to subterranean structures which are not called to Pioneer's attention or correctly shown on the plans furnished, and Client agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to this matter, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees.

### **14. PAYMENT TERMS**

Invoices shall be submitted to Client either on a lump sum or time and materials basis, whichever is provided for in this Agreement or in any



proposal or estimate tendered following this Agreement. If any project proposal provides for a lump sum payment, Pioneer may require a percentage of the lump sum price upon the authorization of any project proposal associated with this Agreement. Pioneer will submit invoices to Client monthly and a final bill upon completion of services. Invoices will show charges for different personnel and expense classifications. A more detailed separation of charges and back-up data will be provided at Client's request. Pioneer shall furnish insurance certificates, lien waivers, affidavits or other available documents as reasonably requested by Client, provided all amounts due Pioneer have been paid in full.

Unless otherwise provided for in this Agreement, payment is due within 30 days of the earlier of (i) receipt by Client of the project report(s), or (ii) receipt by Client of Pioneer's invoice. Client shall make timely payments in accordance with the terms of this Agreement. In the event Client objects to a Pioneer invoice, or any portion thereof, Client shall provide Pioneer with a clear written statement setting forth said objection within fifteen (15) days after receipt of the invoice. Failure to provide such a written statement shall constitute a waiver of any such objections and acceptance of the invoice as submitted. Client agrees to pay an interest rate of one and one-half percent (1-1/2%) per month, or the maximum rate allowed by law, on past due accounts. Any and all attorney's fees, collection fees or other costs incurred in collecting any delinquent account shall be paid by the Client. Where applicable, Client agrees to pay Pioneer for its services in accordance with the provisions of this Agreement, regardless of whether or not Client has been paid by its client. Site cleanup costs will be billed as portions of the cleanup are completed. Pioneer's standard policy is to establish an escrow account in the amount of the estimated cleanup cost. Pioneer will draw payments from the account as portions of the project are completed.

#### **15. DELAYS IN WORK**

Pioneer will not be responsible for, and Client recognizes that additional charges may result from, conditions and delays in work due to causes beyond Pioneer's control, including but not limited to: fires, strikes, riots, explosions, adverse weather conditions, unavoidable casualties, unavailability of labor or materials or services, process shutdown, acts of God or of the public enemy, court orders, or acts, orders or regulations of any governmental agency. Pioneer will not be responsible for delays in the work caused by Client or its agents, consultants, contractors or subcontractors. Stand-by or non productive time for delays in our work caused by Client will be charged as work time unless provided for as a separate item in any project proposal or other mutually agreed upon document.

#### **16. LIMITATION OF DAMAGES**

Client agrees that the damages recoverable from Pioneer (1) for any negligence, error, omission, design defect, breach of contract, or (2) for any cause of action arising out of or relating to the services provided by Pioneer to Client, or (3) for any indemnification provided for under the terms of this contract, shall be limited to the amount of the fee actually paid by Client to Pioneer or \$50,000.00, whichever is greater. In addition, damages shall only be assessed against Pioneer in proportion to its share of fault.

In no event shall Pioneer be liable for any incidental or consequential damages, including, but not limited to, damages due to delay or lost profit or loss of use.

Client agrees that any claim alleging damages arising out of the materials or services provided pursuant to a proposal submitted in connection with this Agreement must be brought within 1 year of the date that Pioneer provided said materials or services. If said claim is not brought within this time frame, then it shall be waived and forever barred.

#### **17. FAILURE TO FOLLOW RECOMMENDATIONS**

Client waives any claim against Pioneer, and agrees to defend, indemnify and hold Pioneer harmless from any claim or liability for injury or loss that results from failure to implement Pioneer's recommendations, or from implementation of Pioneer's recommendations in a manner that is not in strict accordance with them. Client also agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to the subject matter of this paragraph, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees,

and attorney costs and fees. .

#### **18. EXTENSION OF INDEMNIFICATION**

For good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the limitations set forth in this agreement, Pioneer and Client agree to indemnify and to hold each other harmless against any and all losses, damages and expenses, including attorney's fees court costs and fees, court reporter and deposition costs and fees, expert and consulting costs and fees and exhibit costs, for injuries to property, injuries or death to persons, and any other liability incurred to the extent that, and in proportion for which, any such losses, damages, expenses and costs are due to or result from the negligent acts or omissions of the other in connection with the services provided under this agreement. However, in no event shall Pioneer's indemnification liability exceed the Limitation of Damages set forth in Paragraph 16 of this Agreement.

The obligation to so indemnify is expressly contingent upon the party seeking indemnification to notify the other party, in writing, within thirty (30) calendar days after they knew or reasonably should have known, of any claim, complaint, potential cause of action or proceeding. Failure to provide timely notification shall relieve the other of its obligation to so indemnify.

The parties agree not to settle or compromise any claim or cause of action for which indemnification is sought without the written permission of the other, which permission shall not be unreasonably withheld.

This indemnity obligation shall terminate one (1) year following the completion or expiration of this Agreement.

#### **19. INSURANCE & GENERAL LIABILITY**

Pioneer represents and warrants that it and its agents, staff and consultants employed by it are protected by worker's compensation insurance and that Pioneer has such coverage under public liability and property damage insurance policies which Pioneer deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Additional insurance, if requested by Client, will be obtained by Pioneer (if procurable) and charged to the Client at cost plus 15%. Pioneer shall not be responsible for any loss, damage or liability arising from acts by Client, its agents, staff and other consultants employed by it.

#### **20. NO WARRANTY**

PIONEER WILL PERFORM SERVICES IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH PREVAILING STANDARDS AND PRACTICES APPLICABLE TO THE SERVICES. NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE, OR INTENDED BY THE RENDITION OF CONSULTING OR ENGINEERING SERVICES OR BY THE FURNISHING OF ORAL OR WRITTEN REPORTS.

#### **21. OWNERSHIP OF DOCUMENTS**

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by Pioneer, as instruments of services, shall remain the property of Pioneer. Client agrees that all reports and other work furnished to Client or its agents, which are not paid for, will be returned upon demand and will not be used by Client for any purposes whatsoever.

#### **22. INDEPENDENT CONTRACTOR STATUS**

Pioneer is an independent contractor and shall not be deemed to be an employee or agent of Client.

#### **23. ASSIGNMENT**

**This Agreement may not be assigned by either party without the prior written consent of the other party.**

#### **24. COMPLETE AGREEMENT**

This Agreement supersedes all prior agreements, written and oral, relating to the subject matter hereof. This Agreement contains each and every agreement and understanding between the parties relating to its subject matter. It may not be altered or amended except in writing and signed by both the Client and Pioneer. Client agrees that it has not relied

on any oral or written representations or understandings not explicitly contained in these Terms and Conditions or the underlying agreement in contracting with Pioneer.

#### **25. TERMINATION**

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms herein. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Pioneer shall be paid for services performed prior to the termination date plus reasonable expenses to demobilize. In the event of termination, or suspension for more than three (3) months, prior to completion of all reports contemplated by any project proposal prepared pursuant to this Agreement, Pioneer may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of Pioneer in completing such analyses, records and reports.

#### **26. SURVIVAL**

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and Pioneer shall survive the completion of services and the termination of this Agreement.

#### **27. ENFORCEABILITY AND SEVERABILITY**

Should any element of any project proposal prepared in connection with this Agreement be deemed in conflict with any element of this Agreement, unless this Agreement clearly voids the conflicting element in the project proposal, the wording of the project proposal shall govern. Any element of this contract later held to violate a law or regulation, or is otherwise deemed invalid or unenforceable, shall be deemed void, but all remaining provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

#### **28. HEADINGS**

The headings used in this Agreement are intended for purposes of convenience only and do not constitute actual terms of the Agreement.

#### **29. CHOICE OF LAW**

This Agreement shall be governed by the law of the State of Illinois. The circuit court of Cook County in Chicago Illinois shall have sole and exclusive jurisdiction over all disputes arising out of or relating to this Agreement.

#### **30. ATTORNEY FEES**

The successful party in any lawsuit (or other legal proceeding, including mediation or arbitration), arising out of or related to the terms of this Agreement, may recover all litigation costs and expenses from the unsuccessful party, including but not limited to: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees.