



**Braun Intertec Corporation**  
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April 16, 2019

Proposal QTB097945

Mr. Kevin Bills  
I & S Group, Inc.  
201 Main Street, Suite 1020  
La Crosse, Wisconsin 54601  
Sent via email: [Kevin.Bills@is-grp.com](mailto:Kevin.Bills@is-grp.com)

Re: Proposal for Construction Materials Testing and Special Inspections  
La Crosse Center Expansion and Renovations  
300 Harborview Plaza  
La Crosse, Wisconsin

Dear Mr. Bills:

Braun Intertec is pleased to submit this proposal to provide special inspections and construction materials testing services for the proposed La Crosse Center Expansion and Renovations located at 300 Harborview Plaza in La Crosse, Wisconsin.

## **Our Understanding of Project**

We understand this project includes the design and construction of a new expansion along with renovations to the existing La Crosse Center facility. Construction will include a new ballroom and renovations to the existing facility with the necessary grading, utilities, and stormwater management. The project is currently in the design stage and we understand the project team is only requesting unit rate pricing for the inspections and testing at this time. An inspection and testing budget will be put together at a later date once project documents are completed.

## **Available Information**

This proposal was prepared using the Request for Proposal, dated April 8, 2019 and discussions with I & S Group, Inc. regarding the project scope and testing requirements.

## **Scope of Services**

ICC certified special inspectors, or qualified technicians working under the direction of ICC certified special inspectors, will provide the required special inspection services under the direction of a licensed professional engineer, either on a full-time or periodic basis depending on the construction schedule and when requested by the general contractor. The special inspectors or qualified technicians will perform the specified construction materials testing services on a full-time or on-call basis as scheduled by the general contractor. After reviewing the available information, to determine compliance with the project plans and/or specifications, other design or construction documents and applicable ASTM and other industry standards, we interpret our scope of services for this project will be limited to the tasks defined below. *Special inspections are italicized.*

### **Pre-Construction Condition Survey**

It is our understanding that the property in question is a multi-use complex. For the purposes of outlining the costs and allowing for additions or subtractions from the scope of work, we have broken down the “tasks” of the Pre-construction Condition Survey (Pre-CCS) as follows:

**Task 1** – Exterior Survey: All elevations from ground level

**Task 2** – Interior Survey: All accessible interior spaces

Pre-CCS’s document the existing conditions of a building prior to construction. This is useful for both the building owner and the contractor to establish a baseline condition to compare claims of damage related to construction. The Pre-CCS will consist of the following:

- A video recording of the exterior of the building(s) that includes some narration of observations.
- A video recording of the interior of the building(s) that includes some narration of observations. This may require entry into normally locked areas.
- Photographs and plan sketches of the areas of concern mentioned in the video and notes on their approximate size and location.
- These videos and images will be saved to a USB drive and provided to the owner.
- Throughout the pre-construction condition survey process, we will look for exposed physical distresses in structural components. We will help identify areas for crack monitors to be placed as necessary prior to construction.
- This survey is limited to visual observations of the structure and of those areas already exposed. We will not be doing any destructive exploration to expose areas of structural framing.

Braun Intertec will perform these services using engineers, architects and/or architects and engineers in training. We propose to do this work with a team of two.

We will make every attempt possible minimize interference with the operation of tenants or residents.

We anticipate the project will proceed upon authorization of our contract. We anticipate completing the assigned tasks within 2 or 3 weeks of authorization. If unforeseen complications arise with regard to gaining access to the proposed structures, we will contact you. Our project schedule will be dependent on the accessibility of the structures. A final pre-construction condition survey report be provided upon completion. If the appointments require after hours or weekend work additional fees apply.

### **Vibration Control Plan**

Through our visual observations completed for the structures, we will generate a general assessment of the observed conditions of the building and use this for development of a Vibration Control Plan to be utilized by the contractor and owner during construction activity. This assessment is limited to visual observations of the exposed areas of the structure, review of the background data collected from the vibration monitors, and review of geologic conditions of the site. We will not be doing any destructive exploration to expose areas of structural framing. We will include in our Vibration Control Plan those areas we feel may be at risk and comment on conditions that may be compromised further based on the observed conditions.

The Vibration Control Plan will provide recommendation for monitoring for vibrations related to the construction activities as well as other considerations. The vibration control plan will also include discussion of the geological conditions and their effects on vibration, discussion of surrounding structures and their susceptibility to vibration, theoretical vibration predictions given equipment being used, and a vibration monitoring procedure to be followed throughout the demolition and earthwork process.

### **Construction Vibration Monitoring**

With the start of the construction process, we propose to place vibration monitors at chosen locations adjacent to the construction fieldwork. We will place the seismographs in a secure location at the beginning of the work day, prior to work beginning or as schedule dictates. The monitors will be placed throughout the work area, preferably adjacent to structures specifically called out in the project specifications or noted in the precondition surveys. In general, the monitors will be placed near the exterior building face or foundation element. The monitors will be placed perpendicular from the anticipated location of the work to minimize the distance from the work location to the seismograph.

As the precondition surveys or work plans dictate, we can place additional monitors within the building by coordinating with the building owners. We will also coordinate with the project team as needed. Monitors will be observed periodically and moved as necessary in accordance to the contract documents or as construction activities dictate. The locations of the vibration monitors will be determined at the start of construction and based on the phase of work that is taking place. It is our goal to place the monitors in locations that will allow us to record vibration events generated by activities such as the site demolition, deep foundation installation, subgrade preparation work (site grading and soil compaction), and remodel activities. If vibrations are observed above a pre-determined threshold, the contractor and other approved parties will be notified and the vibration levels documented.

In addition to the cost of the vibration monitors, we have included time for the following items:

- A site visit prior to the start of construction activities to record background vibrations readings.
- Initial site visit at the start of construction to install and set up vibration monitoring equipment.
- Modems connected to the vibration monitors will be utilized by emailing results to a pre-determined group of project team members; however, the source of the vibrations will be dependent on the observations of on-site staff.
- Periodic site visits to move the vibration monitors, perform maintenance and download the collected data.
- Engineering time to analyze the data and provide a final report including our procedures, monitoring locations and dates, and results from the vibration monitoring.
- Site visits to exchange batteries if remote monitoring is being implemented.
- Weekly site visits to review construction activities or evaluate vibration data.

The following additional tasks can be completed if requested. These services would be billed in accordance with the hourly rates shown in the attached cost estimate and would be considered additional services beyond those items described above.

- Crack monitors may be installed and observed and documented on a weekly basis in conjunction with the vibration monitoring process.
- If immediate notification of vibration generating activities is required, a technician can perform full-time monitoring on the site, noting the activities and/or equipment producing the vibrations.
- Engineering time to analyze/review the data and provide weekly reports including our procedures, monitoring locations and dates, and results from the vibration monitoring if desired.

Should any vibrations exceed the project specifications during construction, we will notify designated key people as we become aware of the exceedances, and can provide recommendations to reduce construction related vibrations, if applicable.

### **Post-Construction Condition Survey**

At the completion of the construction activities, we will perform a Post-Construction Condition Survey (Post-CCS). The techniques used for the documentation will be similar to that completed under the Pre-CCS and will primarily focus on those areas identified in the Pre-CCS or were identified as concerns during construction. This survey will highlight any changes in condition which may have occurred during the construction process. A summary report will be completed and the report, photos and videos will be delivered via USB drive.

### **Deep Foundation Related Services**

- Perform high-strain dynamic pile testing of two test piles in general accordance with ASTM D 4945.
- Perform a wave matching analysis of the dynamic data from each of the test piles using the CAPWAP computer program.
- Plot the PDA results using the PDILOT2 computer program.
- Establish a driving criterion for the remaining production piles based on the collected data and analysis from the test piles.
- *Observe the installation of the production piles on a full time basis.*
- Prepare a deep foundations summary table and final report.

### **Intermediate Foundation Related Services**

- *Observe installation of helical piles on a continual basis during installation.*
- Document depth torque and time of helical piles installation.
- Prepare helical foundations summary sheets and a final report.

### **Soil Related Services**

- *Observe and evaluate the soils exposed in the bottoms of excavations to determine if the soils are similar to those encountered by soil borings associated with referenced geotechnical reports, and suitable for support of excavation backfill, additional required fill, and the project's structural design loads.*
- Perform laboratory mechanical analyses of prospective fill and backfill materials.

- Perform laboratory Proctor tests to determine the maximum standard or modified Proctor dry densities and optimum moisture contents of prospective backfill and fill materials.
- *Observe the placement and compaction of backfill and fill.*
- Test compacted backfill and fill placed below building footprints and oversizing areas, below slabs and/or pavements, behind walls, in utility trenches, and in areas for which compaction specifications have been provided, to determine if the relative compaction achieved.

#### **Concrete Related Services**

- *Observe concrete reinforcement placement.*
- *Observe the general placement of bolts and other embeds in the plastic concrete.*
- *Observe the concrete placement and test sample preparation.*
- Sample and test the plastic concrete for slump, air content, and temperature.
- Prepare test cylinders for laboratory compressive strength testing.
- Perform laboratory compressive strength testing of the concrete samples.
- Perform floor flatness and levelness testing.

#### **Structural Masonry Related Services**

- *Observe the structural masonry construction and grouting operation on a periodic basis.*
- *Observe the preparation of grout samples.*
- Perform structural masonry grout testing.
- Perform structural masonry mortar testing.
- *Observe the preparation of prisms.*
- Perform structural masonry block prism testing.

#### **Structural Steel, Precast Welding and Fireproofing Related Services**

- *Observe and test the structural steel welded and bolted connections.*
- *Observe and test the metal decking connections for orientation, sidelap fasteners, the hold down connections and the placement of shear studs.*
- *Observe and test the precast welded or bolted connections.*
- *Observe and document the installation of the base plate anchor bolts.*
- *Observe the installation of drilled-in-place, epoxy secured anchor bolts.*
- *Observe and test the spray-applied fireproofing for thickness, density and bond strength.*

#### **Pavement Related Services**

- Provide proofroll observations of the pavement subgrade soils and/or aggregate base layer to determine if the materials tested are capable of supporting bituminous or concrete pavement.
- Perform laboratory mechanical analyses of aggregate base material samples.
- Perform laboratory Proctor tests to determine the maximum standard or modified Proctor dry density and optimum moisture content of the aggregate base material.
- Test compacted aggregate base material to determine if the relative compaction achieved.
- Measure the temperature of the bituminous pavement at initial laydown and during rolling for compliance with the project documents, and to help the contractor develop a roll pattern for effective compaction.
- Measure the in-place density of the fresh bituminous with a nuclear density gauge to help the contractor develop a roll pattern for effective compaction.

### **Air/Weather Barrier Related Services**

Perform air weather barrier observations and testing on a periodic basis during the application of the materials.

### **Roof Related Services**

Perform roofing observations and testing on a periodic basis during the application of the materials.

### **Window Related Services**

Perform window air/water observations and testing on a periodic basis during construction.

### **Ground Penetrating Radar Related Services**

Perform ground penetrating radar (GPR) or use X-ray techniques to map out the location of reinforcement and post-tension tendons in existing slabs.

### **Project Communication and Reporting Services**

Provide a special inspection final report at the end of the project as well as consulting services and service management including scheduling of our field personnel, review of field reports, and communication with the contractor, owner, building official, and design team.

### **Cost**

We will furnish the services described in this proposal based on the unit rates attached. We will provide the project team with a testing and special inspection budget once project plans and specifications have been developed. A tabulation showing hourly and/or unit rates associated with our proposed scope of services is attached. The actual cost of our services will be based on the actual units or hours expended to meet the requirements of the project documents.

This cost estimate was developed with the understanding that the scope of services defined herein will be required and requested during our normal work hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. Services that we are asked to provide to meet the project requirements or the contractors construction schedule outside our normal work hours will be invoiced using an overtime rate factor. The factor for services provided outside our normal work hours or on Saturday will be 1.25 times the normal hourly rate for the service provided. The factor for services provided on Sunday or legal holidays will be 1.5 times the normal hourly rate for the service provided.

Because our services are directly controlled by the schedule and performance of others, the actual cost may vary from our estimate. Invoices for our services will be based on the actual number of hours spent on the project and the units tested.

Our work will extend over multiple invoicing periods. As such, for work that is performed during the course of each invoicing period, we will submit partial progress invoices.

## **Additional Inspection and Testing Services**

We can provide additional inspection and testing services upon the request of the owner or contractor. We will provide pricing for these services if the owner or contractor requests inspection or construction material testing be conducted for additional services.

## **General Remarks**

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. The proposed fee is based on the scope of services described and the assumption that our services will be authorized within 30 days, and that others will not delay us beyond our proposed schedule. We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Ben Sullivan at 608.781.7277 or by email at [bsullivan@braunintertec.com](mailto:bsullivan@braunintertec.com).

Sincerely,  
BRAUN INTERTEC CORPORATION



Benjamin Sullivan, PE  
Project Engineer



Mark Gretebeck  
Principal

Attachments:  
Unit Rates  
General Conditions – CMT (1/1/18)

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The proposal is accepted, and you are authorized to proceed.

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**Authorizer's Firm**

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**Authorizer's Signature**

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

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**Authorizer's Title**

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**Date**



# Project Proposal

QTB097945

## La Crosse Center Expansion & Renovation

<b>Client:</b> I & S Group, Inc. Kevin Bills 115 East Hickory Street, Suite 300 Mankato, MN 56001	<b>Work Site Address:</b> 300 Harborview Plaza La Crosse, WI 54601	<b>Service Description:</b> Construction Materials Testing & Special Inspections
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	Description	Units	Unit Price
<b>Phase 1</b>	<b>Pre and Post Construction Condition Surveys and Vibration Monitoring</b>		
<b>Activity 1.1</b>	<b>Pre and Post Construction Condition Surveys (PCCS)</b>		
2224	La Crosse Center PCCS Field Work	Each	1,800.00
1870	BaSS Trip Charge	Each	250.00
192	SE Field Technician II	Hour	77.00
199	Principal Engineer/Architect	Hour	160.00
177	Project Assistant	Hour	70.00
178	Project Manager	Hour	100.00
126	Project Engineer	Hour	120.00
2222	Adjacent Structure PCCS Field Work	Each	800.00
<b>Activity 1.2</b>	<b>Construction Vibration Monitoring</b>		
1571	Seismograph monitor, with modem, per month/unit	Each	900.00
191	SE Field Technician I	Hour	67.00
1861	CMT Trip Charge	Each	5.00
2227	Vibration Monitoring Control Plan	Each	2,000.00
177	Project Assistant	Hour	70.00
199	Principal Engineer/Architect	Hour	160.00
178	Project Manager	Hour	100.00
192	SE Field Technician II	Hour	77.00
126	Project Engineer	Hour	120.00
<b>Phase 2</b>	<b>Construction and Materials Testing &amp; Special Inspections</b>		
<b>Activity 2.1</b>	<b>Driven Deep Foundation Observations and Testing</b>		
240	Observations, Piles & Piers	Hour	77.00
241	High-Strain Dynamic Pile Testing	Hour	107.00
1342	Pile Driving Analyzer equipment rental, per day	Each	450.00
1344	CAPWAP Analysis	Each	400.00
126	Project Engineer	Hour	120.00
1861	CMT Trip Charge	Each	5.00
1861	CMT Trip Charge	Each	5.00
130	Principal Engineer	Hour	160.00
<b>Activity 2.2</b>	<b>Helical Pier Observations</b>		
240	Pile and Pier Observations	Hour	77.00
1861	CMT Trip Charge	Each	5.00
<b>Activity 2.3</b>	<b>Soil Observations and Testing</b>		

	206	Excavation Observations and Hand Augers	Hour	67.00
	207	Compaction Testing - Nuclear	Hour	57.00
	1318	Modified Proctor Test (ASTM D 1557), per sample	Each	150.00
	1162	Sieve analysis with 200 wash (ASTM C 136 and C 117), per sample	Each	120.00
	1308	Nuclear moisture-density meter charge, per hour	Each	5.00
	1861	CMT Trip Charge	Each	5.00
	1861	CMT Trip Charge	Each	5.00
<b>Activity 2.4</b>	<b>Concrete Observations and Testing</b>			
	260	Concrete Observations	Hour	67.00
	261	Concrete Testing	Hour	57.00
	1364	Compressive strength of concrete cylinders (ASTM C 39), per specimen	Each	18.00
	294	Floor Flatness Testing	Hour	77.00
	1796	Concrete surface profiler (Dipstick ) rental, per day	Each	150.00
	1861	CMT Trip Charge	Each	5.00
	278	Concrete Cylinder Pick up	Hour	57.00
	1861	CMT Trip Charge	Each	5.00
	1861	CMT Trip Charge	Each	5.00
<b>Activity 2.5</b>	<b>Masonry Observations and Testing</b>			
	203	Masonry Observations	Hour	67.00
	1409	Compressive strength - Hollow block prisms (ASTM C 1314), per specimen	Each	140.00
	213	Masonry Sample Pick up	Hour	57.00
	1412	Compressive strength of grout (ASTM C 1019), per specimen	Each	45.00
	1861	CMT Trip Charge	Each	5.00
	1861	CMT Trip Charge	Each	5.00
	1407	Net area determination (ASTM C 140) , per specimen	Each	15.00
	223	Masonry Testing	Hour	57.00
	1861	CMT Trip Charge	Each	5.00
	1490	Compressive strength of 2x2 mortar cube (ASTM C 780), per specimen	Each	25.00
<b>Activity 2.6</b>	<b>Structural Steel Observations</b>			
	605	Structural Steel Technician	Hour	77.00
	1664	NDE Trip charge	Each	5.00
<b>Activity 2.7</b>	<b>Pavement Observations and Testing</b>			
	211	Proofroll Observations	Hour	67.00
	1861	CMT Trip Charge	Each	5.00
<b>Activity 2.8</b>	<b>Fire Proofing Observations and Testing</b>			
	281	Fireproofing Observations & Testing	Hour	77.00
	1784	Thickness/Density, laboratory determination	Each	45.00
	1785	Adhesion/Cohesion Testing, per test	Each	35.00
	1664	NDE Trip charge	Each	5.00
<b>Activity 2.9</b>	<b>Project Management and Reporting</b>			
	238	Project Assistant	Hour	70.00
	226	Project Manager	Hour	100.00
	128	Senior Engineer	Hour	140.00

	126	Project Engineer	Hour	120.00
	1140	Special Inspections Final Report	Each	500.00
<b>Phase 3</b>				
<b>Building Science Services</b>				
<b>Activity 3.1 Air/Weather Barrier Observations and Testing</b>				
	1870	BLSC Trip Charge	Each	250.00
	5511	Air/Weather Barrier Test, per trip	Each	1,200.00
	199	Principal Engineer/Architect	Hour	160.00
	178	Project Manager	Hour	110.00
	177	Project Assistant	Hour	70.00
<b>Activity 3.2 Roof Observations</b>				
	1870	BLSC Trip Charge	Each	250.00
	5504	Roofing Observation, per trip	Each	1,200.00
	199	Principal Engineer/Architect	Hour	160.00
	177	Project Assistant	Hour	70.00
	178	Project Manager	Hour	110.00
<b>Activity 3.3 Window Air/Water Observations and Testing</b>				
	1870	BLSC Trip Charge	Each	250.00
	PERDIEM	Per Diem	Each	150.00
	1087	Equipment	Each	1,400.00
	5510	AAMA 501.2 Window Test, per trip	Each	1,500.00
	199	Principal Engineer/Architect	Hour	160.00
	178	Project Manager	Hour	110.00
	177	Project Assistant	Hour	70.00
<b>Activity 3.4 Ground Penetrating Radar Testing</b>				
	259	Ground penetrating radar (including equipment), per hour	Hour	147.00
	1862	Trip Charge	Each	5.00

### Section 1: Agreement

**1.1** Our agreement with you consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between you and us. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

**1.2** The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

**1.3** In the event you use a purchase order or other documentation to authorize our scope of work ("Services"), any conflicting or additional terms are not part of this Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to terminate this Agreement without liability to you or others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

### Section 2: Our Responsibilities

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

**2.2** In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction. If during the one year period following completion of Services it is determined that the above standards have not been met and you have promptly notified us in writing of such failure, we will perform, at our cost, such corrective services as may be necessary, within the original scope in this Agreement, to remedy such deficiency. Remedies set forth in this section constitute your sole and exclusive recourse with respect to the performance or quality of Services.

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

further that site conditions may vary over distance or change over time.

**2.4** Our duties do not include supervising or directing your representatives or contractors or commenting on, overseeing, or providing the means and methods of their services unless expressly set forth in this Agreement. We will not be responsible for the failure of your contractors, and the providing of Services will not relieve others of their responsibilities to you or to others.

**2.5** We will provide a health and safety program for our employees, but we will not be responsible for contractor, owner, project, or site health or safety.

**2.6** You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

**2.7** Unless a fixed fee is indicated, our price is an estimate of our project costs and expenses based on information available to us and our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

### Section 3: Your Responsibilities

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

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

**3.3** If we notify you that radiographic or gamma ray equipment or other nuclear testing or measuring device will be used, you will be responsible for the cooperation of your employees and your contractors in observing all radiation safety standards.

**3.4** You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any work site. If we observe or suspect the presence of contaminants not anticipated in this Agreement, we may terminate Services without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

**3.5** The time our field personnel spend on the job site depends upon the scheduling of the work we are observing or testing. You agree that any changes in scheduling may result in additional

costs and agree to pay for those services at the rates listed in our cost estimate.

**3.6** You agree to include us as an indemnified party in your contracts, if any, for work by others on the project, protecting us to the same degree as you are protected. You agree to list us as an Additional Insured under your liability insurance policies and to require subrogation be waived against us and that we will be added as an Additional Insured on all policies of insurance, including any policies required of your contractors or subcontractors, covering any construction or development activities to be performed on the project site.

### Section 4: Reports and Records

**4.1** Unless you request otherwise, we will provide our report(s) in an electronic format.

**4.2** Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property. We hereby grant you a license to use the reports and related information we provide only for the related project and for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. *You agree to indemnify, defend, and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use.*

**4.3** If you do not pay for Services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

**4.4** Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

### Section 5: Compensation

**5.1** You will pay for Services as stated in this Agreement. If such payment references our Schedule of Charges, the invoicing will be based upon the most current schedule. An estimated amount is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

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

**5.3** If you direct us to invoice a third party, we may do so, but you agree to be responsible for our compensation unless the third party is

creditworthy (in our sole opinion) and provides written acceptance of all terms of this Agreement.

**5.4** Your obligation to pay for Services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, your successful completion of any project, receipt of payment from a third party, or any other event. No retainage will be withheld.

**5.5** If you do not pay us in accordance with this Agreement, you agree to reimburse all costs and expenses for collection of the moneys invoiced, including but not limited to attorney fees and staff time.

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

**5.7** If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work changes, or if changed labor conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice, the schedule will be extended for each day of delay, and we will be compensated for costs and expenses incurred in accordance with our Schedule of Charges.

**5.8** If you fail to pay us in accordance with this Agreement, we may consider the default a total breach of this Agreement and, at our option, terminate our duties without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

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

#### **Section 6: Disputes, Damage, and Risk Allocation**

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

**6.2** *Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of*

*business opportunity, loss of profit or revenue, loss of product or output, or business interruption.*

**6.3** You and we agree that any action in relation to an alleged breach of our standard of care or this Agreement shall be commenced within one year of the date of the breach or of the date of substantial completion of Services, whichever is earlier, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute. We will not be liable unless you have notified us within 30 days of the date of such breach and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services. Should you fail to meet the conditions above, you agree to fully release us from any liability for such allegation.

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

**6.5** *You agree to indemnify us from all liability to others in excess of the risk allocation stated herein and to insure this obligation. In addition, all indemnities and limitations of liability set forth in this Agreement apply however the same may arise, whether in contract, tort, statute, equity or other theory of law, including, but not limited to, the breach of any legal duty or the fault, negligence, or strict liability of either party.*

**6.6** This Agreement shall be governed, construed, and enforced in accordance with the laws of the state in which our servicing office is located, without regard to its conflict of laws rules. The laws of the state of our servicing office will govern all disputes, and all claims shall be heard in the state or federal courts for that state. Each of us waives trial by jury.

**6.7** No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual officers or employees.

#### **Section 7: General Indemnification**

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

**7.2** To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

#### **Section 8: Miscellaneous Provisions**

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

**8.2** You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

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

**8.4** This Agreement may be terminated early only in writing. You will compensate us for fees earned for performance completed and expenses incurred up to the time of termination.

**8.5** If any provision of this Agreement is held invalid or unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

**8.6** No waiver of any right or privilege of either party will occur upon such party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.