

January 23, 2019

Proposal QTB090831

Ms. Sarah Mittelstadt
Southern Plains Education Cooperative
1200 N Park Street
Fairmont, MN 56031
c/o Dan Stenzel, Kraus-Anderson Construction Company (dan.stenzel@krausanderson.com)

Re: Proposal for Special Inspection and Testing Services
Southern Plains Education Cooperative Renovation and Addition
1200 N Park Street
Fairmont, Minnesota

Dear Mr. Stenzel:

Braun Intertec Corporation is pleased to submit this proposal to provide special inspections and testing services for the Southern Plains Education Cooperative Renovation and Addition project in Fairmont, Minnesota.

We have completed the geotechnical evaluation (Braun Intertec Project Number B1809220), dated October 11, 2018, so we have a unique understanding of the site and construction challenges. We can aid the construction team by applying this experience and transferring our knowledge developed during the design phase which will provide professional continuity to the construction. Our work on the project to date gives us familiarity with the project team and design development which allows us to understand some of the considerations used when developing the projects design.

Since our inception in 1957, we have grown into one of the largest employee owned engineering firms in the nation. With around 1,000 employee owners, retaining our firm gives you access to a diverse range of services and professionals you can consult with if the unforeseen occurs. The size of our company also allows us to respond quickly when schedule constraints occur.

Our Understanding of Project

We understand this project will include the construction of a two-story, 3,600 square-foot expansion with associated pavement improvements. The addition will have precast hollow core planking with structural steel framing supported on conventional spread footings.

Available Information

This proposal was prepared using the following documents and information.

- Project plans and specifications prepared by I&S Group, Inc., dated November 21, 2018.
- Special Inspection and Testing Schedule prepared by I&S Group, Inc., dated November 21, 2018.

- Project Addendum No. 1 prepared by I&S Group, Inc., dated December 12, 2018.
- Project Addendum No. 2 prepared by I&S Group, Inc., dated December 14, 2018.
- A geotechnical report B1809220 prepared by Braun Intertec Corporation, dated October 11, 2018.
- Discussions with Mr. Dan Stenzel of Kraus-Anderson Construction Company regarding the proposed construction.

Project Approach and Staff Qualifications

Special Inspections

Braun Intertec has adopted the International Code Council (ICC) Model Program for Special Inspection to develop the guiding principles for our special inspection program. This model was selected because it was designed by the ICC to assist owners, contractors and building officials in the understanding, administration and enforcement of the special inspection requirements of the International Building Code (IBC). Currently, there are ICC certifications for soils, reinforced concrete, structural masonry, pre-tension/post-tension (pre-stressed) concrete, spray-applied fireproofing, structural steel and bolting, and structural welding.

Qualifications and Experience

ICC certified special inspectors or qualified technicians under the supervision of ICC certified special inspectors will provide special inspections. An ICC certified special inspector is one who has successfully demonstrated their ability to understand the IBC, construction practices and how to read and understand construction documents. Through experience and examination, our ICC certified special inspectors have demonstrated their ability to provide special inspection services.

Inspections and Reporting

Our special inspectors summarize the nature, extent and results of special inspection activities at the time they are performed on Special Inspection Daily Report forms submitted electronically to the general contractor's on-site personnel for review and records. These records can also be transmitted electronically to others who may want to review these documents on an agreed upon schedule. When unresolved discrepancies are noted, we will document the issues and work with the design and construction team to bring them to resolution. Special inspection final reports will be prepared and submitted upon completion as required by the requirements of the IBC.

Communications

Braun Intertec special inspectors will communicate the results of their inspections to the contractor and our supervising engineer each day special inspections are performed. We strive to have our special inspectors develop a working relationship with the project's structural engineer-of-record. We may attempt contact with the structural engineering consultant periodically to review the work being performed and to request clarifications and direction on any item that may require it.

Construction Materials Testing

Qualified technicians working under the direction of a professional engineer will provide the services. Experience and certification information is available upon request once we are provided with schedule information. Concrete technicians assigned to the project are ACI Concrete Field Testing Technician –

Grade I certified to conduct the required concrete testing. Soil technicians are certified to use a nuclear gauge for soil density testing, so test results can be determined on site and evaluated once the required laboratory testing is completed. Field test results will be verbally reported daily to the general contractor on site, with written field and laboratory reports distributed shortly after.

Scope of Services

Services are performed under the direction of a licensed professional engineer, either on a full-time or periodic basis, depending on the construction schedule and when they are requested by the general contractor. After reviewing available information to determine compliance with project plans and/or specifications, other design or construction documents, and applicable ASTM and other industry standards, our scope of services for the project will be limited to the tasks defined below.

Soil Related Services

- Observe and evaluate the soils exposed in the bottoms of excavations to determine if the soils are similar to those encountered with the geotechnical evaluation and suitable for support of fill or foundations. Our engineer can provide consultation for conditions that appear to differ from the geotechnical evaluation.
- Perform laboratory Proctor tests to determine the maximum Proctor dry densities and optimum moisture contents of prospective fill materials.
- Observe the placement and compaction of fill.
- Test compacted fill placed below building footprints and oversizing areas, below slabs, adjacent to walls, and in areas for which compaction specifications have been provided, to determine if the relative compaction was achieved. We have included compaction testing for utility trench backfill in Alternate 1.

Concrete Related Services

- Observe concrete reinforcement placement.
- Observe the general placement of bolts and other embeds in the plastic concrete.
- Sample and test the plastic concrete for slump, air content, temperature and prepare test cylinders for laboratory compressive strength testing with ACI level 1 field technicians. We will perform concrete testing on structural items as required by the IBC. We included concrete testing for interior slab-on-grade and precast topping concrete, as requested. As they are not required by the IBC, we have not included testing for the exterior sidewalks, curb and gutter, and pavement. Those services not requested or required by the IBC are included in Alternate 1 as a unit price.
- Observe the concrete placement and test sample preparation.
- Perform laboratory compressive strength testing of the concrete samples.

- Observe the installation of post-installed anchors on a periodic basis.

Structural Masonry Related Services

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

Structural Steel and Precast Concrete Welding Related Services

- Observe and test the structural steel welded and bolted connections in the field.
- Observe and test the metal decking connections for orientation, sidelap fasteners, and the hold down connections.
- Observe and test the precast concrete welded or bolted connections.

Paving Related Services – Included in Alternate

- Provide test roll observations of the pavement subgrade soils and/or aggregate base layer to determine if the materials tested are capable of supporting bituminous.

Engineering Consulting and Project Communication and Reporting Services

- Provide engineering consulting services, review test results and observations reports, and prepare required final reports.
- Management, including scheduling of our field personnel and communication with the contractor, owner, building official, and design team.
- Transmit results to the project team on weekly basis to the contractor, owner, building official, fabricators and design team.

Basis of Scope of Work

The costs associated with the proposed scope of services were estimated using the following assumptions. If the construction schedule is modified or the contractor completes the various phases of the project at different frequencies or durations than shown in this proposal, we may need to adjust the overall cost accordingly. The scope of work and number of trips required to perform these services are as shown in the attached table. Notable assumptions in developing our estimate include:

- This project will begin in late-January of 2019.
- Assumptions regarding the number of trips for special inspections and testing are outlined in the attached cost estimate table. As the contractor's schedule becomes available and designs

are finalized, please review this proposed scope of work to determine if the project's needs and budget will be met.

- Concrete placements for the structure will be observed throughout the duration by our technician as required by the IBC and project documents.
- The inspection of the reinforcement associated with structural concrete will be performed immediately prior to testing of the concrete with no additional trips or time incurred.
- The masonry construction will require inspections to be completed every time grout is placed.
- We assume the structural steel fabricator will be AISC certified and review of quality control manual or inspections of the fabrication shop are **not** required. If this assumption is not correct, please call us and we will provide a cost estimate for the fabrication shop inspections.
- No special site specific training or gear is required to complete our scope of services.
- Parking will be available on site for our vehicles.
- You, or others you may designate, will provide us with current and approved plans and specifications for the project. Modification to these plans must also be sent to us so we can review their incorporation into the work.
- We will require a minimum of 24 hours' notice for scheduling inspections for a specific time. Shorter than 24 hours' notice may impact our ability to perform the requested services, and the associated impacts will be the responsibility of others.

Cost

We will furnish the services described in this proposal for the following estimate fees:

Special Inspections Related	\$15,990	Initials SAM
Alternate – Non-Special Inspections Related*	\$1,720	SAM

*Does not include exterior concrete testing, unit rates are indicated in the alternate.

Please indicated by initialing next to the services desired. A tabulation showing hourly and unit rates associated with our proposed scope of services is attached. To the extent possible, units and hours were reviewed with representatives of the contractor to determine if time frames are consistent with their expectations for completing the various activities. 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 contractor's 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. We have not included premiums for overtime; however, we recommend that allowances and contingencies be made for overtime charges based on conversations with the contractor. You will be billed only for services provided on a time and material basis.

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 provided for the project and the units tested. It is difficult to project all of the services and the quantity of services that may be required for any project. If services are required that are not discussed above, we will provide them at the rates shown in the attached table or, if not shown, at our current Schedule of Charges. We will invoice you on a monthly basis.

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. After reviewing this proposal, **please sign and return one copy to our office as notification of acceptance and authorization to proceed.** If anything in this proposal is not consistent with your requirements, please let us know immediately. Braun Intertec will not release any written reports until we have received a signed agreement. Also, ordering services from Braun Intertec constitutes acceptance of the terms of this proposal (including the attached General Conditions).


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 Brady Stauffer at 651.491.1483 or (BStauffer@braunintertec.com) or Philip Bailey at 507.995.2788 or (PBailey@braunintertec.com).

Sincerely,

BRAUN INTERTEC CORPORATION

 Brady Stauffer
Jan 23 2019 7:19 AM

Brady A. Stauffer, EIT
Engineer-In-Training

 Mickale Endres
FOR
Jan 23 2019 7:27 AM

Philip E. Bailey, PE
Principal/Senior Engineer

Attachments:
Project Proposal
General Conditions – CMT (1/1/18)


The proposal is accepted. We will reimburse you in accordance with this agreement, and you are authorized to proceed:




Authorizer's Firm



Authorizer's Signature



Authorizer's Name (please print or type)



Authorizer's Title

1-24-19

Date

Client:

Southern Plains Education Cooperative
Sarah Mittelstadt
201 E. Third Street
Fairmont, MN 56031
(507) 238-1472

Work Site Address:

1200 N Park Street
Fairmont, MN 56031

Service Description:

Special Inspections and Construction
Materials Testing

	Description	Quantity	Units	Unit Price	Extension
Phase 1	Construction and Materials Testing				
Activity 1.1	Soil Observations and Testing				\$2,565.00
206	Excavation Observations	7.00	Hour	75.00	\$525.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Foundation Excavations	2.00	Trips	3.50	7.00
207	Compaction Testing - Nuclear	14.00	Hour	65.00	\$910.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Site Grading	2.00	Trips	3.50	7.00
	Foundation Wall Backfill	2.00	Trips	3.50	7.00
1318	Standard Proctor Test(ASTM D 698)	2.00	Each	150.00	\$300.00
128	Senior Engineer	1.00	Hour	140.00	\$140.00
1861	CMT Trip Charge	6.00	Each	80.00	\$480.00
1308	Nuclear moisture-density meter charge, per hour	14.00	Each	15.00	\$210.00
Activity 1.2	Concrete Observations and Testing				\$5,167.50
260	Concrete Observations	10.00	Hour	75.00	\$750.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Footings	2.00	Trips	1.00	2.00
	Column Pads	1.00	Trips	1.00	1.00
	Elevator Pit Slab	1.00	Trips	1.00	1.00
	Foundation Walls/ Piers	3.00	Trips	1.00	3.00
	Epoxy Observations	1.00	Trips	3.00	3.00
261	Concrete Testing	24.50	Hour	65.00	\$1,592.50
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Footings	2.00	Trips	2.50	5.00
	Column Pads	1.00	Trips	2.50	2.50
	Elevator Pit Slab	1.00	Trips	2.50	2.50
	Foundation Walls/ Piers	3.00	Trips	2.50	7.50
	Slab On Grade	1.00	Trips	3.50	3.50
	Precast Topping Slab	1.00	Trips	3.50	3.50
1364	Compressive strength of concrete cylinders (ASTM C 39), per specimen	45.00	Each	17.00	\$765.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Footings	2.00	Set	5.00	10.00
	Column Pads	1.00	Set	5.00	5.00
	Elevator Pit Slab	1.00	Set	5.00	5.00
	Foundation Walls/ Piers	3.00	Set	5.00	15.00
	Slab On Grade	1.00	Set	5.00	5.00
	Precast Topping Slab	1.00	Set	5.00	5.00
1861	CMT Trip Charge	16.00	Each	80.00	\$1,280.00
278	Concrete Cylinder Pick up	12.00	Hour	65.00	\$780.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Cylinder Pickup	6.00	Trips	2.00	12.00
Activity 1.3	Masonry Observations and Testing				\$3,087.50

203	Masonry Observations		24.50 Hour	75.00	\$1,837.50
	<i>Work Activity Detail</i>	<i>Qty Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>	
	Elevator Wall	7.00 Trips	3.50	24.50	
1409	Compressive strength - Hollow block prisms (ASTM C 1314), per specimen		3.00 Each	140.00	\$420.00
1412	Compressive strength of grout (ASTM C 1019), per specimen		3.00 Each	50.00	\$150.00
1861	CMT Trip Charge		7.00 Each	80.00	\$560.00
1407	Net area determination (ASTM C 140) , per specimen		3.00 Each	40.00	\$120.00
Activity 1.4	Structural Steel Observations				\$3,030.00
605	ICC Structural Steel Technician		27.00 Hour	90.00	\$2,430.00
	<i>Work Activity Detail</i>	<i>Qty Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>	
	Welding, Framing, Bolting	6.00 Trips	4.50	27.00	
1664	NDE Trip charge		6.00 Each	100.00	\$600.00
Activity 1.5	Project Management				\$2,140.00
238	Project Assistant		4.00 Hour	75.00	\$300.00
226	Project Manager		8.00 Hour	120.00	\$960.00
128	Senior Engineer		2.00 Hour	140.00	\$280.00
2227	Special Inspection Final Report		1.00 Each	600.00	\$600.00
Phase 1 Total:					\$15,990.00
Phase 2	Alternate - Construction Materials Testing				
Activity 2.1	Soil Observations and Testing				\$720.00
207	Compaction Testing - Nuclear		7.00 Hour	65.00	\$455.00
	<i>Work Activity Detail</i>	<i>Qty Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>	
	Utilities, Storm, Sanitary, Water Main	2.00 Trips	3.50	7.00	
1308	Nuclear moisture-density meter charge, per hour		7.00 Each	15.00	\$105.00
1861	CMT Trip Charge		2.00 Each	80.00	\$160.00
Activity 2.2	Concrete Testing				\$0.00
261	Concrete Testing		Hour	65.00	\$0.00
278	Concrete Cylinder Pick up		Hour	65.00	\$0.00
1861	CMT Trip Charge		Each	80.00	\$0.00
1364	Compressive strength of concrete cylinders (ASTM C 39), per specimen		Each	17.00	\$0.00
Activity 2.3	Pavement Observations & Testing				\$685.00
211	Proofroll Observations		7.00 Hour	75.00	\$525.00
	<i>Work Activity Detail</i>	<i>Qty Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>	
	Parking lots	2.00 Trips	3.50	7.00	
1861	CMT Trip Charge		2.00 Each	80.00	\$160.00
Activity 2.4	Project Management				\$315.00
238	Project Assistant		1.00 Hour	75.00	\$75.00
226	Project Manager		2.00 Hour	120.00	\$240.00
Phase 2 Total:					\$1,720.00
Proposal Total:					\$17,710.00

General Conditions

Construction Material Testing and Special Inspections

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.