


ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 09/21/2009

Item No.: 12.c

Department Approval

City Manager Approval



Item Description: Approve Contract with Braun Intertec to Undertake Remedial Planning for the Twin Lakes Phase II Public Infrastructure

1 **1.0 BACKGROUND**

2 With Phase I of the public improvements in the Twin Lakes project area nearing completion, staff
3 would like to begin planning for the implementation of the second phase of improvements with the goal
4 to construct these improvements during the 2010 construction season. As shown in Attachment A, the
5 Phase II improvement would include continuing Twin Lakes Parkway from the westerly roundabout at
6 Mount Ridge Road to the easterly roundabout at Prior Avenue, constructing the roundabout, and
7 reconstructing Prior Avenue. This project would also include the construction of the associated public
8 utilities, streetscape, and pedestrian facilities.

9 Based on the 60-percent Construction Plans, actual land purchase prices, and estimated land purchase
10 prices, the estimated cost of completing Phase II is \$3.46 million, which includes \$1.06 million in land
11 acquisition, \$480,000 in engineering and oversight services, \$208,000 in environmental remediation
12 costs, and \$1.71 million in construction costs. The City has already incurred approximately \$897,000 in
13 land acquisition costs as part of the land purchase in summer 2009, which leave approximately \$2.57
14 million to fund.

15 Fundraising for this project has already commenced. In July 2009, the U.S. House of Representatives
16 included an allocation of \$1 million in its 2010 appropriations bill. This appropriation was not included
17 in the Senate's version of the bill. The City is working to ensure that these funds make it out of
18 committee and into the final appropriations package. In addition, in August 2009, the City Council
19 authorized staff to submit a \$1 million grant application on behalf of this project to the Minnesota
20 Department of Employment and Economic Development.

21 Staff plans to continue seeking external funds for this project. Several funders, including the Minnesota
22 Department of Employment and Economic Development, the Metropolitan Council, and Ramsey
23 County, are soliciting grant applications for environmental cleanup. These applications are due on
24 November 2, 2009. In order to be eligible to apply for these funds, the City must submit a Response
25 Action Plan (RAP) and/or Development Response Action Plan (DRAP) with the application that has
26 been approved by the Minnesota Pollution Control Agency's Voluntary Investigation and Cleanup
27 (VIC) Program.

28 Staff has requested a proposal from Braun Intertec to enroll the Phase II area into the VIC program and
29 undertake the development of a RAP. Braun has estimated that this work will cost \$6,500 to complete.

30 The development of a RAP will be necessary in order to undertake the construction of the parkway
31 regardless of whether or not the City applies for grant dollars. The benefit of completing this step now
32 is it positions the City to apply for grant dollars to offset the environmental cleanup costs.

33 **2.0 POLICY OBJECTIVE**

34 By undertaking the development of the RAP, the City is positioning itself to take advantage of regional
35 and state financial resources for environmental cleanup. Policy 4.3 of the Economic Development and
36 Redevelopment Chapter of the 2030 Comprehensive Plan (preliminarily approved) supports this
37 activity. It states: “Foster environmental remediation of polluted property through partnerships with
38 property owners and funding agencies.”

39 **3.0 FINANCIAL IMPACTS**

40 The City is not impacting the general fund by authorizing this \$6,500 expenditure. Environmental
41 assessment is an eligible tax increment expense. The City can use existing tax increment balances to
42 pay for this activity.

43 **4.0 STAFF RECOMMENDATION**

44 Staff recommends that the City Council approve the \$6,500 expenditure for the development of a RAP
45 for the environmental remediation of the right of way upon which the Phase II infrastructure
46 improvements will be constructed. A RAP will be needed prior to construction. Undertaking its
47 development now allows the City to work with regional and state agencies to leverage outside resources
48 for this work.

49 **5.0 REQUESTED COUNCIL ACTION**

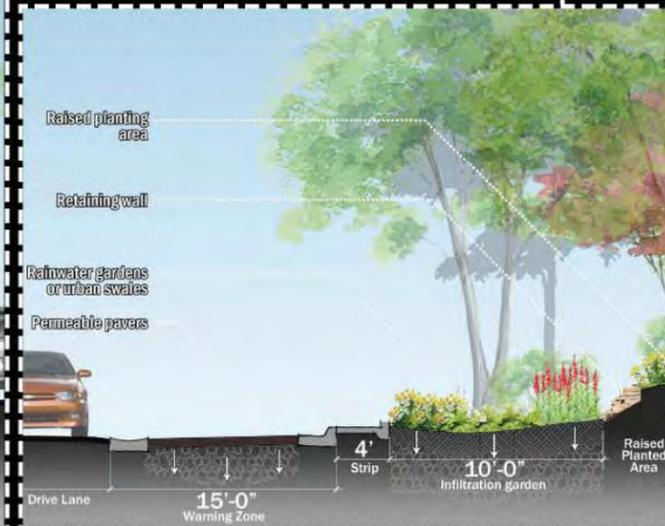
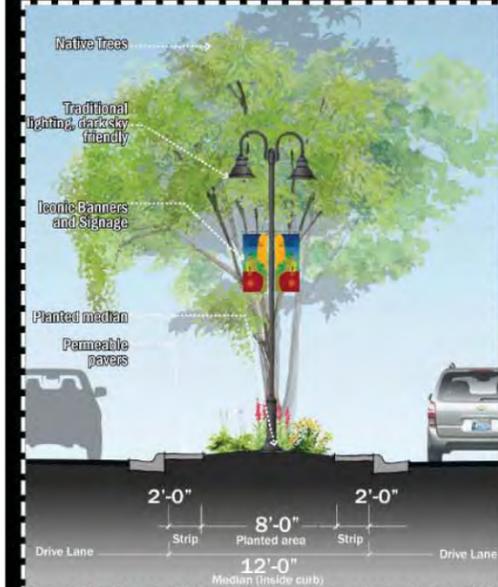
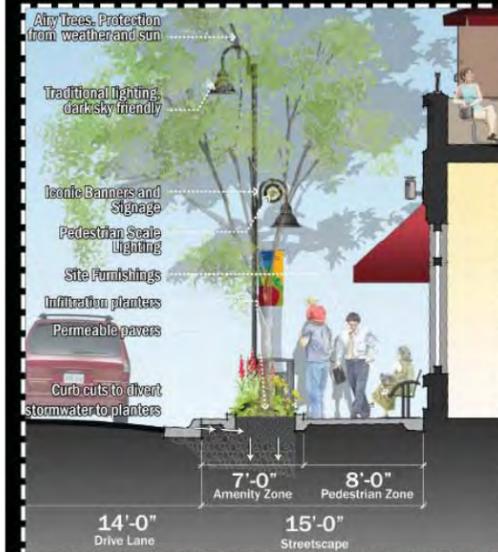
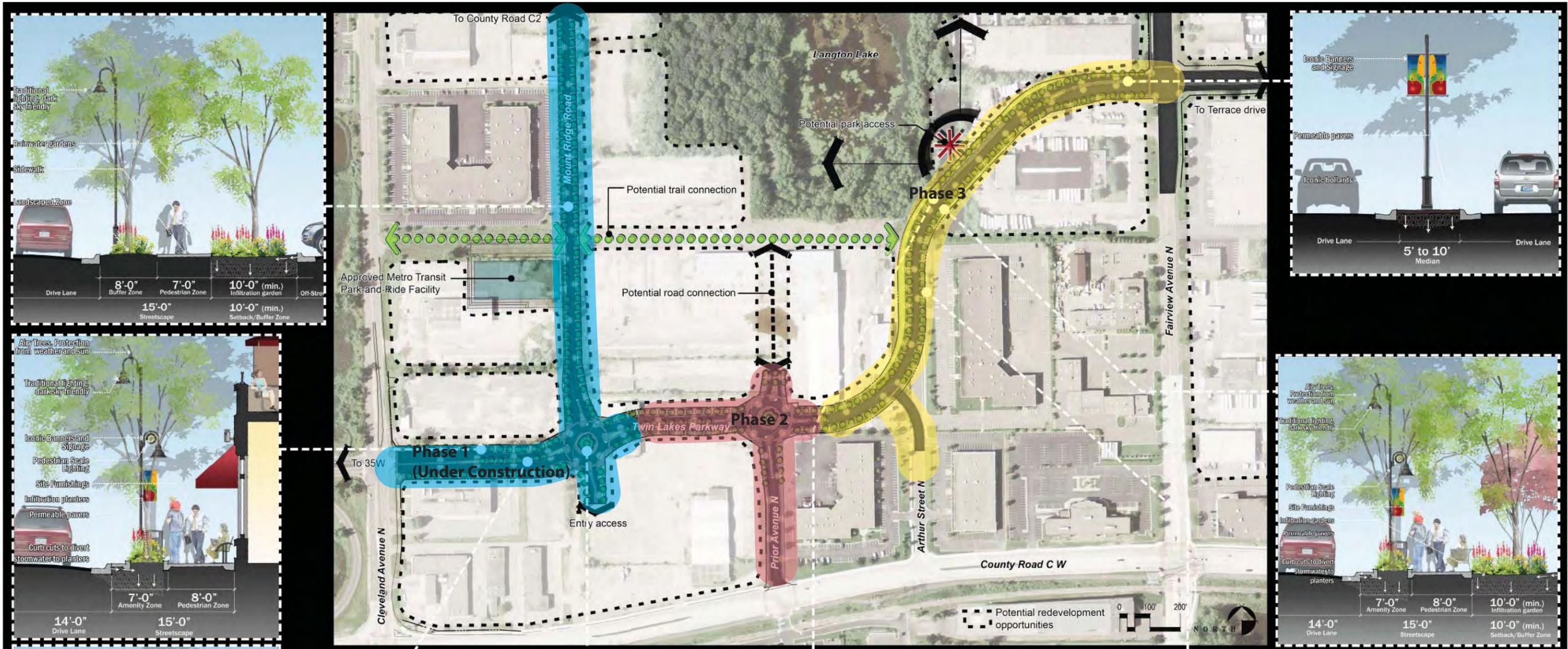
50 Approve a \$6,500 contract with Braun Intertec to enroll the Twin Lakes Phase II infrastructure area into
51 the Voluntary Cleanup and Investigation Program and undertake the development of a Response Action
52 Plan

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Prepared by: Jamie Radel, Economic Development Associate

Attachments: A: Map depicting proposed project
B: Proposal prepared by Braun Intertec



BRAUN
INTERTECBraun Intertec Corporation
11001 Hampshire Avenue S
Minneapolis, MN 55438Phone: 952.995.2000
Fax: 952.995.2020
Web: braunintertec.com

September 9, 2009

Proposal BL-08-02387.F

Ms. Deb Bloom, City Engineer
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113Re: Proposal to Prepare a Response Action Plan
Second Phase of Construction of Twin Lakes Parkway
Mount Ridge Road to Prior Avenue
Roseville, Minnesota

Dear Ms. Bloom:

Braun Intertec has prepared this proposal to prepare a response action plan (RAP) to provide for the appropriate management of petroleum- and non-petroleum-contaminated soil and perched (shallow) groundwater that is likely to be encountered during the proposed second phase of construction of Twin Lakes Parkway located between Mount Ridge Road and Prior Avenue (Site).

Based on previous investigations performed at the Site by Braun Intertec and others, both petroleum- and non-petroleum-related contamination is likely to be encountered in both soils and perched groundwater during the proposed roadway construction activities at the Site.

The RAP will be submitted for review and approval to both voluntary programs within the Minnesota Pollution Control Agency (MPCA). The Voluntary Investigation and Cleanup (VIC) Program, which manages non-petroleum contamination, and the Petroleum Brownfields (PB) Program, which manages petroleum-related contamination.

In addition to preparing a RAP for the proposed Site activities, Braun Intertec will assist the City in preparing an enrollment application for the MPCA VIC and PB Programs.

Costs

We will furnish the services described herein on an hourly and unit cost basis. Based on our current understanding of the Site conditions and the assumptions stated in this proposal, we project the total cost to perform the Scope of Services will be about \$6,500. Although the actual cost may be more or less than the estimated cost, the estimated cost will not be exceeded without additional authorization from you. The estimated cost breakdown by activity is listed below.

Service Description	Cost Estimate
Preparation of a MPCA VIC and PB Program Application	\$ 500
Preparation of a RAP for MPCA Approval	\$3,500
Correspondence with MPCA to provide project details and edits to RAP	<u>\$2,500</u>
Estimated Total	\$6,500

Schedule

Based on our current schedule, we will be able to begin the scope of services within approximately one week of receipt of your authorization. Approximately 14 days will be required to complete the MPCA application and RAP. The timeframe for receiving approval from the MPCA for the RAP is estimated between 30 and 45 days from the date of submittal.

Acceptance of Proposal

Braun Intertec appreciates the opportunity to present this proposal to you. It is being presented in duplicate so if it is acceptable, the original can be retained for your records and ***the copy can be signed and returned to us electronically, by fax, or U.S. Mail in its entirety, including the General Conditions***, as written authorization to proceed. We will begin the project upon receipt of your authorization.

The estimated cost of \$6,500 presented in this proposal is based on the scope of services described and the assumption that the proposal will be authorized within 30 days and that the project will be completed within the proposed schedule. If the project is not authorized within 30 days, we may need to modify the proposal. If the project cannot be completed within the proposed schedule due to circumstances beyond our control, revising the proposal may be required for completion of the remaining tasks. Payment for services is due upon receipt of invoice, with interest added to unpaid balances after 30 days. The attached General Conditions are a part of this proposed contract.

If you have questions concerning the contents of this proposal or the project in general, please call Jason Kunze at 952.995.2436.

Sincerely,

BRAUN INTERTEC CORPORATION



Jason J. Kunze
Senior Scientist


for Michael L. Bratrud, PG
Principal

Attachment:
General Conditions for City of Roseville (4-29-09)

Authorization to Proceed:

Please proceed according to the described scope of services:

Authorizer's Firm

Authorizer's Name (please print or type)

Authorizer's Signature

Authorizer's Title

Date

property. They will 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 4: Compensation

4.1 You will pay for services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost 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.

4.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices on 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.

4.3 If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

4.4 You agree to compensate us in accordance with our fee schedule 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.

4.5 If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation. If you and we do not reach agreement on such compensation within 30 days of our written application, we may terminate without liability to you or others.

4.6 If you fail to pay us within 60 days following invoice date, we may consider the default a total breach of our Agreement and, at our option, terminate our duties without liability to you or to others.

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

Section 5: Disputes, Damage, and Risk Allocation

5.1 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.

5.2 Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

5.3 We will not be liable for damages unless suit is commenced within two years of the date of injury or loss or within two years of the date of the completion of our services, whichever is earlier. We will not be liable unless you have notified us of the discovery of the claimed breach of contract, negligent act, or omission within 30 days of the date of discovery and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages.

5.4 You agree that our aggregate liability will not exceed \$5,000,000.

5.5 If you do not pay us within 60 days of invoice date, or if you make a claim against us that is resolved in our favor, you agree to reimburse our expenses, including but not limited to attorney fees, staff time, expert witness fees, and other costs of collection or litigation.

5.6 The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury. No employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not make a claim against individual employees.

Section 6: General Indemnification

6.1 We will indemnify and hold you harmless from and against demands, damages, and expenses 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 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.

6.2 To the extent it may be necessary to indemnify either of us under Section 6.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

6.3 You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

Section 7: Miscellaneous Provisions

7.1 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 sole negligence.

7.2 This Agreement is our entire agreement. It supersedes prior agreements. It may be modified only in a writing, making specific reference to the provision modified.

7.3 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.

7.4 Our Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

4-29-09

Our agreement (“Agreement”) with you consists of these General Conditions and the accompanying written proposal or authorization.

Section 1: Our Responsibilities

1.1 We will provide the services specifically described in our Agreement with you. You agree that we are not responsible for services that are not fairly included in our specific undertaking. 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.

1.2 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.

1.3 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 change over time.

1.4 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

1.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.

1.6 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.

1.7 Estimates of our fees or other project costs will be based on information available to us and on 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 2: Your Responsibilities

2.1 You will provide us with prior 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 our work.

2.2 You will provide access to the site. In the course of our work 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 normal damage in the estimated charges.

2.3 You agree to provide us, in a timely manner, with information that you have regarding buried objects at the site. We will not be responsible for locating buried objects at the site unless we accept that duty in writing. You agree to hold us harmless from claims, damages, losses, and related expenses involving buried objects of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others on your behalf furnished to us.

2.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials in a sample provided to us. You agree to provide us with information in your possession or control relating to contamination at the work site. If we observe or suspect the presence of contaminants not anticipated in our Agreement, we may terminate our work without liability to you or to others, and we will be paid for the services we have provided.

2.5 Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. You agree to hold us harmless and indemnify us from any such claim or loss.

2.6 Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless we accept that duty in writing.

2.7 You agree to make disclosures required by law. In the event you do not own the site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. You agree to hold us harmless and indemnify us from claims related to disclosures made by us that are required by law and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.

Section 3: Reports and Records

3.1 We will furnish reports to you in duplicate. We will retain analytical data for seven years and financial data for three years.

3.2 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 but are subject to a license to you for your use in the related project 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, which will not be unreasonably withheld. You agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

3.3 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you. In case of any difference or ambiguity between an electronic and a paper document, the paper document shall govern.

3.4 If you do not pay for our 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. You agree not to use or rely upon our work for any purpose whatsoever until it is paid for in full.

3.5 Samples remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your