



1550 East Republic Road  
Springfield, MO 65804  
tothassociates.com  
417.888.0645

May 5, 2022

Jessica Fett, Mitch Krysa  
Independence Power and Light  
17221 E. 23rd St. South  
Independence, MO 64051

Re: MoDOT Hwy 24 – Move 8 Poles – Engineering Services Proposal

Dear Jessica and Mitch,

Toth has prepared an estimate of costs to perform engineering services for the MoDOT Hwy 24 line move project per IPL's request. The estimate is a not-to-exceed (NTE) amount with time billed to IPL on an hourly basis per the attached rates according to actual effort and expenses. A schedule of labor and third-party entity costs are provided on the following page(s).

Toth accepts the City's terms and conditions as agreed upon per the pre-qualified A&E list (RFQ #20098).

Thank you for allowing Toth to provide a proposal for this work. Please contact me if you have any questions regarding this proposal.

Sincerely,

Lewis Wiles, PE  
Vice President



### Unit Fee Schedule

#### Base Hourly Rates

The following "Base" hourly charges will be applicable for services provided:

Engineer Principal .....	\$235
Engineer PE-3 .....	\$215
Project Manager-3 .....	
Engineer PE-2 .....	\$195
Engineer-3 .....	
Project Manager-2 .....	
Rate Analyst-3 .....	
Construction Review-2 .....	\$180
Project Manager-1 .....	
ROW Administrator .....	
Construction Review-1 .....	\$165
Designer-4 .....	
Engineer PE-1 .....	
Engineer-2 .....	
Grants-3 .....	
Professional Land Surveyor .....	
ROW-2 .....	
Designer-3 .....	\$150
Rate Analyst-2 .....	
ROW-1 .....	
Contract and Procurement-2 .....	\$135
Designer-2 .....	
Engineer-1 .....	
GIS-3 .....	
Grants-2 .....	
Project Administrator-2 .....	
Drafter-3 .....	\$120
GIS-2 .....	
Survey Technician .....	
Contract and Procurement-1 .....	\$110
Designer-1 .....	
Project Administrator-1 .....	
Rate Analyst-1 .....	
Drafter-2 .....	\$100
Field Representative-3 .....	
GIS-1 .....	
Grants-1 .....	
Drafter-1 .....	\$80
Field Representative-2 .....	
GIS Aide .....	
Staff Assistant .....	
Field Representative-1 .....	\$70

#### Expenses

MILEAGE and LODGING\* - will be charged at the allowable rate as established by the IRS.

MEALS\* - current TA allowance to include three (3) meals: \$35.00

\* Daily expenses may be billed at direct cost for lodging and meals.

**IPL - MoDOT Hwy 24 Pole Replacements - 8 Poles to Steel on Pier - Engineering Cost Estimate**  
by Toth and Associates

Tasks	Project Team Blended Rate	Hours Required	Cost
30% Design Layout and line design parameters/solutions - 8 locations	\$165.00	24	\$3,960.00
60% Design Review with IPL - Finalize Design	\$165.00	20	\$3,300.00
Bill of Materials	\$165.00	20	\$3,300.00
Material Procurement (Steel Poles/Structures) - 8 unique structures	\$165.00	60.0	\$9,900.00
Caisson Design (8)	\$165.00	16.0	\$2,640.00
90% Design Issue for Construction	\$165.00	40.0	\$6,600.00
4 Site Visits	\$165.00	42	\$6,930.00
Construction Support	\$165.00	32.00	\$5,280.00
Record Documents	\$165.00	8.00	\$1,320.00
<b>Geotechnical On-site Study (by Subconsultant GTS) to Evaluate Soil-bearing Capacity for Caissons</b>			<b>\$17,975.00</b>
<b>8 Pole Relocate - Not To Exceed Amount</b>			<b>\$61,205.00</b>
<b>Notes, Assumptions, and Clarifications:</b>			
1. The Project Team Blended Rate includes all labor required (engineering, drafting, quality control, project management, admin, etc.).			
2. Review of manufacturer's drawings includes review of one drawing revision for general conformance to the specifications. Manufacturers are responsible for their own quality control and developing drawings to meet specifications.			
3. The cost of the Geotech is direct pass-through from GTS - see enclosed GTS quote. Any change in the GTS cost will be result in a Change Order.			

**Independence Power & Light**  
**MoDOT Hwy 24 Sidewalk Expansion**  
**8 Distribution Poles – Self-supporting on Pier**  
(Scope of Work)

**Project Description:**

Replace/Move eight (8) poles with steel self-supporting (unguyed) structures on concrete piers.

**Engineering Scope**

- Geotech Boring and Report (4 borings – 8 caissons)
- Caisson design (8)
- Layout and line design parameters
- Design/Layout of existing line segments along Hwy 24 to get new structure heights and loadings
- Steel specifications for 8 poles
- Bid steel poles
- Review steel pole drawings for conformity
- 4 site visits
- Bill of Materials (BOM)
- Construction contract specifications and drawings
- Engineering assistance during construction
- Self-weathering steel poles
- Grade B strength factors
- 5' max Caisson diameter

## CONSULTANT'S PROPOSAL

### 1 Identification of Interested Parties

#### Owner of Facilities

City of Independence - Power & Light  
P.O. Box 1019  
Independence, MO 64051

#### Purchaser

Toth and Associates, Inc.  
1550 East Republic Road  
Springfield, MO 65804

### 2 Proposal

The Geotechnical Engineering Consultant (hereinafter called the "Consultant") proposes to provide the services specified herein based on the terms, conditions and specifications included herein. The proposed price for the services is as follows:

	ITEM	QUANTITY	PRICE
<div style="position: absolute; left: -100px; top: 0px;">U.S. Hwy 24 Improvements</div> <div style="position: absolute; left: 0px; top: 0px; text-align: center;"> <del>E-F Transmission Reroute</del> </div>	Onsite Geotechnical Investigation	1 Lot	\$ <u>16,425.00</u>
	Report	1	\$ <u>1,550.00</u>
<b>TOTAL:</b>			\$ <u>17,975.00</u>

Please provide a per unit price which shall be used to calculate charges for additional borings/testing if necessary.

\$ 17<sup>00</sup> /ft in soil  
 \$ 22<sup>00</sup> /ft in soil with sampling  
 \$ 34<sup>00</sup> /ft in soil with sampling & lab testing  
 \$ 50<sup>00</sup> /ft in rock  
 \$ \_\_\_\_\_ per additional electrical resistivity test

Please provide proposed date(s) to access site for completion of borings ~~and soil resistivity testing~~, based on the schedule of activities detailed in Section 10 of the specifications.

Boring Date(s): 5-2 to 5-9 (Start Date)

Deadlines for final reports are as noted in Section 9. Submitting a final report from a recent project or a sample report similar in content to the final report required by the specifications of this Request for Proposal will aid the Owner's decision of award. Bidders who have provided a report on a IPL project that Toth and Associates has managed within the last 5 years do not need to provide a sample report unless they desire to do so. **As part of the proposal, the Consultant shall provide brief documentation indicating what field work will be done to provide the requested reports. This shall**

~~include items such as proposed quantity, location and depth of borings along with any additional information that may be beneficial to comparing proposals between Consultants.~~

### 3 Terms & Conditions

1. Prices quoted herein are firm provided the OWNER accepts the proposal within thirty (30) days from the proposal date.
2. Prices listed do not include any amount for taxes that may be imposed by any taxing authority for the sale, use or purchase of the services. If any said tax amount is applicable, the amount shall be added to the purchase price and will be paid by the OWNER.
3. One copy of each of the following two forms must be submitted with the proposal (blank forms are included herein):
  - a. CERTIFICATION REGARDING DEBARMENT
  - b. CERTIFICATION REGARDING LOBBYING
4. The Owner retains the right to accept or reject any part or all of the proposal. The Consultant recognizes this right of the Owner by signing below.

GTS, Inc.  
(Name of Company Submitting Bid)

1915 N. Shiloh Dr.  
Fayetteville, AR 72704  
  
(Address of Company Submitting Bid)

travis.willis@gtsconsulting.net  
Email Address

By Travis Willis  
Signature

By Travis Willis  
Signature Name Typed or Printed

Principal  
Title

479-521-7645  
Phone Number



# AGREEMENT FOR GEOTECHNICAL ENGINEERING SERVICES

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**THIS AGREEMENT**, effective as of this \_\_\_\_\_ day of \_\_\_\_\_ 2022, is by and between Toth & Associates, Inc. ("Client") and GTS, Inc. ("Engineer").

**THE PROJECT** is understood to consist of:

Independence Power and Light, U.S. Highway 24 Improvements in Independence, Missouri.

**THIS AGREEMENT** consists of the appended documents which are incorporated herein by reference:

- GTS Proposal No. **GTS122060-R1** (a/k/a SCOPE OF SERVICES); AND
- GENERAL CONDITIONS FOR GEOTECHNICAL ENGINEERING SERVICES

Engineer agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This Agreement may not be modified or altered, except in writing as specifically described in this Agreement.

**CLIENT:**

**ENGINEER:**

**Signature:**

**Print  
Name:**

**Title:**

**Company:**

**Address:**

**Date:**

Travis Willis, P.E.

Principal

GTS, Inc.

1915 North Shiloh Drive

Fayetteville, Arkansas 72704

April 5, 2022

***Revised April 15, 2022***

City of Independence – Power and Light Department  
P.O. Box 1019  
Independence, Missouri 64051

c/o: Mr. Mark T. Olson, P.E.  
Toth & Associates, Inc.

RE: Geotechnical Engineering Proposal  
Independence Power and Light – Highway 24 Improvements  
U.S. Highway 24  
Independence, Missouri  
GTS Proposal No. GTS122060-***R1***

Mr. Olson:

The below project information is based on an emailed request for proposal, received from your office on March 30, 2022. Please contact us prior to awarding the project if the project has changed in scope or description from the information supplied below.

***It should be noted that this proposal has been revised; revisions have been notated by bold and italics formatting.***

#### PROJECT INFORMATION

The project consists of performing ***four (4)*** borings along U.S. Highway 24 for pre-scheduled transmission line improvements. The improvements will consist of steel monopole structures. The monopole structures may be direct embedded or installed on a foundation (concrete pier, vibratory caisson, micropiles, etc.).

The estimated structure foundation loads are shown in the table below.

Structure	Axial Load (kips)	Shear (kips)	Moment (ft-kips)
Transmission/Distribution Pole	40	50	2,000

It should also be noted that we (GTS) acknowledge that both Toth & Associates, Inc. as well as the City of Independence – Power and Light Department will make use of this report as it relates to the subject project.



## GEOTECHNICAL SCOPE OF SERVICES

### Field Sampling

As requested, subsurface conditions will be evaluated at **four (4)** boring locations and advanced to depths of approximately 40 feet below grade. The borings will be advanced at the locations ***identified by you (Mark Olson) in an email to Mr. Travis Willis, P.E.; the coordinates for each location were originally*** provided in the "Hwy 24 Modification\_Vicinity Map" provided to us. Based on geological maps of the site, we anticipate encountering the Kansas City Group which is characterized as cyclic deposits of shale and limestone with minor sandstone and coal beds.

Field personnel will drill the borings using a truck-mounted drilling rig. The drill string will be advanced using either hollow-stem or solid-stem augers depending on site conditions. Wash rotary boring will be used to advance the drill string below the groundwater table. Soil and weathered rock samples will be collected using 2-inch diameter standard split-barrel (spoon) samplers in general accordance with ASTM D1586. Cohesive soil samples will be obtained at selected depths using 3-inch diameter, steel (Shelby) tube samplers in general accordance with ASTM D1587. We propose to sample the soils and weathered rock at roughly 2 ½-foot intervals in the top 15 feet of the boring and at approximate 5-foot intervals below 15 feet to the planned termination depth or auger refusal, whichever occurs first. Hand penetrometer tests will be performed on select intact cohesive samples in the field.

Auger refusal is defined as the depth at which no further penetration of the drill rig augers can be gained using mechanical techniques. If auger refusal is encountered prior to reaching the planned termination depth, rock coring will be performed to advance a minimum of 5 feet into auger refusal materials. Fees for rock coring have been included in this proposal.

Soil samples will be placed in containers to preserve their condition and will be transported to the laboratory for testing in general accordance with ASTM D4220. Logs of the borings will be prepared to document field activities and results.

Depths to top of water will be evaluated during drilling and prior to injecting water, if required for mud rotary drilling or rock coring. After obtaining groundwater measurements, the boreholes will be backfilled in general accordance with requirements of applicable federal, state, and/or local agencies.

We will obtain latitude and longitude coordinates of the actual boring locations using a recreation-grade, hand-held GPS device. The boring location coordinates will be provided on the final boring logs in the Geotechnical Engineering Report. It should be noted that some of the borings will need to be offset in order to avoid road/lane closures as well as existing underground/overhead utilities – offsets will not exceed 50 feet without client authorization.

Finally, it should be noted that traffic control will be needed for one of the planned borings, the easternmost boring location. Fees for traffic control have been included in this proposal.

### Laboratory

Upon completion of the field services, the soil and rock samples will be taken to the GTS, Inc. laboratory. Further laboratory testing on the samples will likely include moisture content tests, sieve analyses, and Atterberg limits tests. Unit weight and unconfined compressive strength tests or one-point triaxial compression (UU tests) will be performed on selected portions of intact Shelby tube samples. Unconfined compressive strength tests will also be performed on intact portions of rock cores, if collected. The intent of these tests is to further characterize the engineering properties of the subsurface soils. The number and type of laboratory tests assigned will be dependent on the subsurface conditions encountered at the sample location.

### POTENTIAL DISTURBANCE TO PROPERTY

The client should be aware the drilling process is necessarily destructive, and the ATV- or truck-mounted drill rig and associated support vehicles will require access to the boring locations. GTS, Inc. will make a reasonable attempt to reduce disturbance to the ground surface during mobilization and/or drilling. However, rutting of the ground surface could occur if the ground is moist to wet at the time of our field sampling.

We have not included any fees for restoring the surface of the site in this proposal other than repairing any asphalt and concrete pavements with cold patch and grout, respectively.

### PUBLIC UTILITIES

GTS, Inc. will use the Missouri One-Call system to mark public utilities at and near the planned sample locations.

### CLIENT'S RESPONSIBILITIES

#### Site Access

The client or client's representative should provide GTS, Inc. drilling equipment and personnel access to the project site. The fee shown in this proposal assumes the project site can be accessed during standard business hours.

Contact information for any parties requiring notification prior to our work on the property should also be provided to GTS, Inc. if applicable to the project site. We understand that we will need to provide two weeks advance notice prior to performing the field work.

#### Private Utility Locations

There is always potential for private utilities to be present in the area of our planned sample borings. These underground utilities may not be marked by the Missouri One-Call system. The client or client's representative should make GTS, Inc. aware of potential private underground structures and utilities at the project site. Because we have no knowledge of private

underground utility locations, we are not responsible for encountering or disrupting private utility lines not marked by the Missouri One-Call system.

## SCHEDULE

The field work will be completed 2 to 3 weeks after receipt of written notice to proceed. We understand that authorization to proceed could be awarded in April 2022. We further understand that you would like a copy of the boring logs to be provided within 5 business days upon the completion of the field work. Likewise, you would like the Geotechnical Engineering Report to be submitted 3 weeks upon the completion of the field work. GTS, Inc. can meet the requested schedule.

## GEOTECHNICAL DELIVERABLES

The Geotechnical Engineering Report will be prepared and stamped by a Professional Engineer registered in the State of Missouri. An electronic copy (PDF) of the report will be emailed to the Owner's Engineer.

The report will address each of the items identified in the RFP provided to GTS, Inc., including, but not limited to:

- Soil, rock, and groundwater conditions encountered at the boring location;
- Logs of the borings;
- Deep foundation design recommendations including foundation type, identification of bearing strata, allowable bearing pressure, estimated settlement, and design soil and rock parameters for use in LPILE software;
- Seismic site classification based on the International Building Code (IBC 2018);
- Earthwork recommendations, including material and compaction requirements; and
- Construction considerations related to soil, rock, and groundwater conditions at the boring location.

## FEES

Based on the scope of services described above and our local experience, we propose the following for the geotechnical engineering services discussed in this proposal for this project:

Item	Fee (lump sum) <sup>1</sup>
Geotechnical Subsurface Investigation and Report <sup>1</sup>	<b>\$17,975.00</b>

<sup>1</sup>The lump sum fee includes equipment mobilization, field operation of equipment, laboratory testing, up to 5 feet of rock coring at each of the boring locations, and the GTS, Inc. geotechnical engineering services discussed in this proposal.



If additional drilling and laboratory testing is required, we propose the following unit rates:

- \$17.00 per foot for soil drilling only
- \$22.00 per foot for soil drilling with sampling
- \$34.00 per foot for soil drilling with sampling and laboratory testing (classification tests)
- \$50.00 per foot for rock coring


Items other than those specified above, or changes in drilling requirements which are revealed by these studies or are necessitated by a change in project scope, may require revised field, laboratory, and engineering services. These services will be discussed and negotiated on an individual basis. We will not proceed with any additional services unless authorized by you. The final invoice will be sent to you after completion of the project.


#### CLOSING

Thank you for the opportunity to present this proposal. Please contact us if you have any questions regarding this proposal or if you have suggestions regarding changes to the agreement or to the proposed work scope. We look forward to working with you on this project.

Sincerely,



  
Travis Willis, P.E. 4-15-22  
Senior Geotechnical Engineer

  
Shaun P. Baker  
Geotechnical Practitioner

Copies: Addressee (email – [molson@tothassociates.com](mailto:molson@tothassociates.com))

# GENERAL CONDITIONS FOR GEOTECHNICAL ENGINEERING SERVICES

## 1. DEFINITIONS

**1.1. Contract Documents.** Plans, specifications, and agreements between Client and Contractors, including addenda, amendments, supplementary instructions, and change orders.

**1.2. Contractor.** The contractor or contractors retained to construct the Project for which Engineer is providing Services under this Agreement.

**1.3. Day(s).** Calendar day(s) unless otherwise stated.

**1.4. Hazardous Materials.** The term Hazardous Materials means any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances or pollution.

**1.5. Services.** The Services provided by Engineer as set forth in this Agreement, the SCOPE OF SERVICES and any written amendment to this Agreement.

**1.6. Work.** The labor, materials, equipment and services required to complete the work described in the Contract Documents.

## 2. SCOPE OF SERVICES

Engineer will perform the Services set forth in the attached SCOPE OF SERVICES.

**2.1. Changes in Scope.** If Engineer provides Client with a writing confirming a change in the SCOPE OF SERVICES, **it will become an amendment to this Agreement upon receiving written confirmation from the Client.** If Services are performed, but the parties do not reach agreement concerning modifications to the SCOPE OF SERVICES or compensation, then the terms and limitations of this Agreement apply to such Services, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 19, "Disputes."

**2.2. Licenses.** Engineer will procure and maintain business and professional licenses and registrations necessary to provide its Services.

**2.3. Excluded Services.** Engineer's Services under this Agreement include only those Services specified in the SCOPE OF SERVICES.

**2.3.1. General.** Client expressly waives any claim against Engineer resulting from its failure to perform

recommended additional Services that Client has not authorized Engineer to perform, and any claim that Engineer failed to perform services that Client instructs Engineer not to perform.

**2.3.2. Biological Pollutants.** Engineer's SCOPE OF SERVICES specifically excludes the investigation, detection, prevention or assessment of the presence of Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, viruses, and/or any of their byproducts. Engineer's SCOPE OF SERVICES will not include any interpretations, recommendations, findings, or conclusions pertaining to Biological Pollutants. Client agrees that Engineer has no liability for any claims alleging a failure to investigate, detect, prevent, assess, or make recommendations for preventing, controlling, or abating Biological Pollutants. Furthermore, Client agrees to ~~defend~~ indemnify, and hold harmless Engineer from all claims by any third party concerning Biological Pollutants, except for damages caused by Engineer's sole negligence.

## 3. PAYMENTS TO ENGINEER

**3.1. Basic Services.** Engineer will perform all Services set forth in the attached SCOPE OF SERVICES for the amount(s) set forth therein.

**3.2. Additional Services.** Any Services performed under this Agreement, except those Services expressly identified in the attached SCOPE OF SERVICES, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

**3.3. Estimate of Fees.** Engineer will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by Engineer. Client recognizes that changes in scope and schedule, and unforeseen circumstances can all influence the successful completion of Services within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the Services will be completed for that amount; rather, it indicates that Engineer shall not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so.

**3.4. Rates.** Client will pay Engineer at the rates set forth in the FEES SECTION OF THE SCOPE OF SERVICES.

**3.4.1. Changes to Rates.** Client and Engineer agree that the FEES SECTION OF THE SCOPE OF SERVICES is subject to periodic review and amendment, as appropriate to reflect Engineer's then-current fee structure. Engineer will give Client at least 30 days advance notice of any changes. Unless Client objects in



*writing to the proposed amended fee structure within 30 days of notification, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client timely objects to the amended fee structure, and Engineer and Client cannot agree upon a new fee structure within 30 days after notice, Engineer may terminate this Agreement and be compensated as set forth under Section 18, "Termination."*

**3.4.2. Prevailing Wages.** Unless Client specifically informs Engineer in writing that prevailing wage regulations cover the Project and the SCOPE OF SERVICES identifies it as covered by such regulations, Client will reimburse, defend, indemnify and hold harmless Engineer from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorneys' fees.

**3.5. Payment Timing; Late Charge.** All invoices are due within 30 days after receipt. All amounts unpaid 30 days after the invoice date will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law.

#### **4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES**

**4.1. Level of Service.** Engineer offers different levels of geotechnical engineering Services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive Services yield more information and reduce the probability of error, but at increased cost. Client must determine the level of Services adequate for its purposes. Client has reviewed the SCOPE OF SERVICES and has determined that it does not need or want a greater level of Services than that being provided.

**4.2. Standard of Care.** Subject to the limitations inherent in the agreed SCOPE OF SERVICES as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Engineer may perform its Services consistent with that level of care and skill ordinarily exercised by other professional engineers practicing in the same locale and under similar circumstances at the time the Services are performed.

**4.3. No Warranty.** No warranty, express or implied, is included or intended by this Agreement.

#### **5. ESTIMATE OF CONSTRUCTION COSTS**

Client acknowledges that construction and Project development are subject to many influences that are not subject to precise forecasting and are outside of Engineer's control. Client further acknowledges that actual costs incurred may vary substantially from the estimates prepared by Engineer and that Engineer does not warrant or guaranty the accuracy of construction or development cost estimates.

#### **6. CONSTRUCTION PHASE SERVICES**

If Engineer's SCOPE OF SERVICES includes observation and/or testing during the course of construction, Engineer may:

##### **6.1. Construction Observation.**

**6.1.1. Site Meetings & Visits.** Engineer will participate in job site meetings as requested by Client, and, unless otherwise requested by Client, visit the site at times specified in the SCOPE OF SERVICES or, if not specified in the SCOPE OF SERVICES, at intervals as Engineer deems appropriate to the various stages of construction to observe the geotechnical conditions encountered by Contractor and the progress and quality of the geotechnical aspects of the Work. Based on information obtained during such visits and on such observations, Engineer may inform Client of the progress of the geotechnical aspects of the Work. Client understands that Engineer may not be on site continuously; and, unless expressly agreed otherwise, Engineer will not observe all of the Work.

**6.1.2. Contractor's Performance.** Engineer does not, and cannot, warrant or guarantee that all of the geotechnical Work performed by Contractor meets the requirements of Engineer's geotechnical recommendations or the plans and specifications for such geotechnical Work; nor can Engineer be responsible for Contractor's failure to perform the Work in accordance with the plans, specifications or the recommendations of Engineer.

**6.1.3. Contractor's Responsibilities.** Engineer will not supervise, direct or have control over the Work nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor for the geotechnical aspects of the Project; for safety precautions and programs incident to the Work; nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor furnishing and performing its Work.

**6.1.4. Final Report.** At the conclusion of Construction Phase Services, Engineer will provide Client with a written report summarizing the tests and observations, if any, made by Engineer.

**6.2. Review of Contractor's Submittals.** If included in the SCOPE OF WORK, Engineer will review and take appropriate action on the Contractor's submittals, such as shop drawings, product data, samples, and other required submittals. Engineer will review such submittals solely for general conformance with Engineer's design, and will not include review for the following, all of which will remain the responsibility of the Contractor: accuracy or completeness of details, quantities or dimensions; construction means, methods, sequences or procedures; coordination among trades; or construction safety.

**6.3. Tests.** Tests performed by Engineer on finished Work or Work in progress are taken intermittently and indicate the general acceptability of the Work on a statistical basis. Engineer's tests and observations of the

Work are not a guarantee of the quality of Work and do not relieve other parties from their responsibility to perform their Work in accordance with applicable plans, specifications and requirements.

## 7. CLIENT'S RESPONSIBILITIES

In addition to payment for the Services performed under this Agreement, Client agrees to:

**7.1. Cooperation.** Assist and cooperate with Engineer in any manner necessary and within its ability to facilitate Engineer's performance under this Agreement.

**7.2. Representation.** Designate a representative with authority to receive all notices and information pertaining to agreement, communicate Client's policies and decisions, and assist as necessary in matters pertaining to the Project and this Agreement. Client's representative will be subject to change by written notice.

**7.3. Rights of Entry.** Provide access to and/or obtain permission for Engineer to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. Engineer will operate with reasonable care to minimize damage to the Project Site(s). However, Client recognizes that Engineer's operations and the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). The cost of repairing such damage will be borne by Client and is not included in the fee unless otherwise stated.

**7.4. Relevant Information.** Supply Engineer with all information and documents in Client's possession or knowledge which are relevant to Engineer's Services. Client warrants the accuracy of any information supplied by it to Engineer, and acknowledges that Engineer is entitled to rely upon such information without verifying its accuracy. Prior to the commencement of any Services in connection with a specific property, Client will notify Engineer of any known potential or possible health or safety hazard existing on or near the Project Site, with particular reference to Hazardous Materials or conditions.

**7.5. Subsurface Structures.** Correctly designate on plans to be furnished to Engineer, the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s), and be responsible for any damage inadvertently caused by Engineer to any such structure or utility not so designated. Engineer is not liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities that were not correctly shown on plans furnished by Client to Engineer.

## 8. CHANGED CONDITIONS

If Engineer discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), Engineer will notify Client in writing of the Changed Conditions. Client and Engineer agree to that they will then renegotiate in good faith the terms and conditions of this Agreement. If Engineer and Client cannot agree upon amended terms

and conditions within 30 days after notice, Engineer may terminate this Agreement and be compensated as set forth in Section 18, "Termination."

## 9. HAZARDOUS MATERIALS

Client understands that Engineer's Services under this Agreement are limited to geotechnical engineering and that Engineer has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with Hazardous Materials. Client is solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies, including the potentially affected public, of the existence of any Hazardous Materials located on or in the Project site, or located during the performance of this Agreement. The existence or discovery of Hazardous Materials constitutes a Changed Condition under this Agreement.

## 10. CERTIFICATIONS

Client agrees not to require that Engineer execute any certification with regard to Services performed or Work tested and/or observed under this Agreement unless: 1) Engineer believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) Engineer believes that the Services performed or Work tested and/or observed meet the criteria of the certification; and 3) Engineer has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by Engineer is limited to an expression of professional opinion based upon the Services performed by Engineer, and does not constitute a warranty or guaranty, either expressed or implied.

## 11. ALLOCATION OF RISK

**11.1. Limitation of Liability.** The total cumulative liability of Engineer, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "Engineer Entities"), to Client arising from Services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by Engineer under this Agreement or **\$1,000,000** whichever is greater; provided, however, that such liability is further limited as described below. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in Engineer's Services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written request, Engineer and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in Engineer's fee, provided that they amend this Agreement in writing as provided in Section 20.

### 11.2. Indemnification.

**11.2.1. Indemnification of Client.** Subject to the provisions and limitations of this Agreement, Engineer agrees to indemnify and hold harmless Client, its shareholders, officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation

reasonable attorney's fees and costs of defense), or other losses (collectively "Losses") to the extent caused by Engineer's negligent performance of its Services under this Agreement.

**11.2.2. Indemnification of Engineer.** Except as governed by Arkansas law regarding the immunity of municipalities, Client will indemnify and hold harmless Engineer Entities from and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Engineer's sole negligence, Client expressly agrees to ~~defend~~ indemnify and hold harmless Engineer Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

**11.3. Consequential Damages.** Neither Client nor Engineer will be liable to the other for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

**11.4. Continuing Agreement.** The indemnity obligations and the limitations of liability established under this Agreement will survive the expiration or termination of this Agreement. If Engineer provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify each other and the limitations on liability established under this Agreement apply to such Services as if the parties had executed an amendment.

## 12. INSURANCE

**12.1. Engineer's Insurance.** Engineer will obtain, if reasonably available, the following coverages:

12.1.1. Statutory Workers' Compensation/Employer's Liability Insurance;

12.1.2. Commercial General Liability Insurance with a combined single limit of \$1,000,000;

12.1.3. Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and,

12.1.4. Professional Liability Insurance in amounts of \$1,000,000 per claim and annual aggregate.

**12.2. Contractor's Insurance.** Client shall require that all Contractors and subcontractors for the Project name Engineer as an additional insured under their General Liability and Automobile Liability insurance policies. If Client is not the Project owner, Client will require the Project owner to require the owner's

Contractor to purchase and maintain General Liability, Builder's Risk, Automobile Liability, Workers' Compensation, and Employer's Liability insurance with limits no less than as set forth above, and to name Engineer and its subcontractors and subconsultants as additional insureds on the General Liability insurance.

**12.3. Certificates of Insurance.** Upon request, Engineer and Client will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance, all policies required herein shall contain a waiver of subrogation.

## 13. OWNERSHIP AND USE OF DOCUMENTS

**13.1. Client Documents.** All documents provided by Client will remain the property of Client. Engineer will return all such documents to Client upon request, but may retain file copies of such documents.

**13.2. Engineer's Documents.** Unless otherwise agreed in writing, all documents and information prepared by Engineer or obtained by Engineer from any third party in connection with the performance of Services, including, but not limited to, Engineer's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively "Documents") are the property of Engineer. Engineer has the right, in its sole discretion, to dispose of or retain the Documents.

**13.3. Use of Documents.** All Documents prepared by Engineer are solely for use by Client and will not be provided by either party to any other person or entity without Engineer's prior written consent.

**13.3.1. Use by Client or Client's Representative.** Client has the right to reuse the Documents for purposes reasonably connected with the Project for which the Services are provided, including without limitation **design, licensing and construction** requirements of the Project.

**13.3.2. Use by Engineer.** Engineer retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services and the right to use the Documents for any purpose.

**13.4. Electronic Media.** ~~Consultant may agree at Client's request to provide Documents and information in an electronic format. Client recognizes that Documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration due to (among other causes) transmission, conversion, media degradation, software error, or human alteration. Accordingly, all Documents and information provided by Consultant in electronic media are for informational purposes only and not as final documentation. Unless otherwise defined in the Scope of Services, Consultant's electronic Documents and media will conform to Consultant's standards. Consultant will provide any requested electronic Documents for a 30-day acceptance period, and Consultant will correct any defects reported by Client to Consultant during this~~



~~period. Consultant makes no warranties, either express or implied, regarding the fitness or suitability of any electronic Documents or media.~~

**13.5. Unauthorized Reuse.** No party other than Client or Client's representatives may rely, and Client will not represent to any other party that it may rely on Documents without Consultant's express prior written consent and receipt of additional compensation. Client will not permit disclosure, mention, or communication of, or reference to the Documents in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material without Consultant's express prior written consent. Client waives any and all claims against Consultant resulting in any way from the unauthorized reuse or alteration of Documents by itself or anyone obtaining them through Client. Client will defend, indemnify and hold harmless Consultant from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained Documents provided to such person or entity, published, disclosed or referred to without Consultant's prior written consent.

#### 14. SAMPLES AND CUTTINGS

**14.1. Sample Retention.** If Engineer provides laboratory testing or analytic Services, Engineer will preserve such soil, rock, water, or other samples as it deems necessary for the Project, but no longer than 45 days after issuance of any Documents that include the data obtained from these samples. Client will promptly pay and be responsible for the removal and lawful disposal of all contaminated samples, cuttings, Hazardous Materials, and other hazardous substances.

**14.2. Monitoring Wells.** Client will take custody of all monitoring wells and probes installed during any investigation by Engineer, and will take any and all necessary steps for the proper maintenance, repair or closure of such wells or probes at Client's expense.

#### 15. RELATIONSHIP OF THE PARTIES

Engineer will perform Services under this Agreement as an independent contractor.

#### 16. ASSIGNMENT AND SUBCONTRACTS

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Engineer may subcontract for the services of others without obtaining Client's consent if Engineer deems it necessary or desirable for others to perform certain Services.

#### 17. SUSPENSION AND DELAYS

**17.1. Procedures.** Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by Engineer. Engineer may terminate this Agreement if Client suspends Engineer's Services for more than 60 days and Client will pay Engineer as set forth under Section 18, "Termination." If Client suspends

Engineer's Services, or if Client or others delay Engineer's Services, Client and Engineer agree to equitably adjust: (1) the time for completion of the Services; and (2) Engineer's compensation in accordance with Engineer's then current SCHEDULE OF CHARGES for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by Engineer for demobilization and subsequent remobilization.

**17.2. Liability.** Engineer is not liable to Client for any failure to perform or delay in performance due to circumstances beyond Engineer's control, including but not limited to pollution, contamination, or release of hazardous substances, strikes, lockouts, riots, wars, fires, flood, explosion, "acts of God," adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market.

#### 18. TERMINATION

**18.1. Termination for Convenience.** Engineer and Client may terminate this Agreement for convenience upon 30 days written notice delivered or mailed to the other party.

**18.2. Termination for Cause.** In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party. The termination notice shall state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 10-day period.

**18.3. Payment on Termination.** Following termination other than for Engineer's material breach of this Agreement, Client will pay Engineer for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with Engineer's then current FEES SECTION OF THE SCOPE OF SERVICES.

#### 19. DISPUTES

**19.1. Mediation.** All disputes between Engineer and Client are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice.

**19.2. Precondition to Other Action.** No action or suit may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice.

**19.3. Choice of Law; Venue.** This Agreement will be construed in accordance with and governed by the laws of the state in which the Project is located. Unless the parties agree otherwise, any mediation or other legal proceeding will occur in the state in which the Project is located.

**19.4. Statutes of Limitations.** Any applicable statute of limitations will be deemed to commence running on the earlier of the date of substantial completion of Engineer's Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

## **20. MISCELLANEOUS**

**20.1. Integration and Severability.** This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.

**20.2. Modification of this Agreement.** This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

**20.3. Notices.** Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this Agreement.

**20.4. Headings.** The headings used in this Agreement are for convenience only and are not a part of this Agreement.

**20.5. Waiver.** The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach.