



Key Largo Wastewater Treatment District
103355 Overseas Hwy, Key Largo, FL
Tuesday, May 5, 2026

MINUTES

CALL TO ORDER (A)

Chairman Nicolas Rodriguez called the meeting to order at 4:00 p.m.

PLEDGE OF ALLEGIANCE (B)

Commissioner Matthew Hardee led the Pledge of Allegiance.

ROLL CALL (C)

Present were: Chairman Nicolas Rodriguez; Commissioners Robert Majeska and Matthew Hardee

Appeared Virtually (voting): Commissioner Timothy Maloney

Appeared Virtually (non-voting): Commissioner Philip Schwartz

Also present: General Manager Peter Rosasco; General Counsel Nicholas Mulick; District Clerk Shannon McCully; Finance Manager Connie Fazio and Jennifer Dempsey; Field Manager Rudy Perez; Plant/Facilities Manager Ryan Dempsey; WWTP Lead Operator Adam Baptiste; Apex Engineering Rob Mathers; IT Support Manny Santana

Appeared Virtually: Apex Engineering Steve Suggs

Guest: Grau and Associates Tony Grau

AGENDA ADDITIONS, CORRECTIONS, OR DELETIONS (D)

Approval of Agenda (E-1)

Commissioner Majeska requested the addition of items *J-2 Cost of Treatment* and *J-3 Billed vs. Treated*

Motion: Commissioner Majeska made a motion to approve the Agenda as amended. Commissioner Hardee seconded the motion. Motion passed without objection.

PUBLIC COMMENT (E)

No Speakers.

APPROVAL OF MINUTES (F)

Minutes of April 21, 2026 (G-1)

Motion: Commissioner Majeska made a motion to approve the

**Minutes of April 21, 2026. Commissioner Hardee
seconded the motion. Motion passed without objection.**

GENERAL MANAGER (G)

ACFR Presentation / Financial Audit Results for FY2026 (G-1)

Mr. Tony Grau presented the Audit Results for Fiscal Year 2026.

Grau and Associates Engagement Letter Proposal (G-2)

Mr. Peter Rosasco requested approval for the Grau an Associates Proposed Financial Audit Engagement Letter.

**Motion: Commissioner Majeska made a motion to approve the request.
Commissioner Maloney seconded the motion.**

Vote on Motion:

Commissioner Majeska – Aye

Commissioner Maloney – Aye

Commissioner Hardee – Aye

Commissioner Schwartz – Aye

Chairman Rodriguez – Aye

APEX Capital & Field Expenses (G-3)

Mr. Rosasco presented a summary of reallocations in Capital Expenses and Field Expenses and explained why no budget amendment is necessary.

IT (H)

No report in agenda.

CUSTOMER SERVICE (I)

No report in agenda.

BUDGET AND FINANCE (J)

2nd Quarter Fiscal Year 2026 Financial Reports (J-1)

Ms. Dempsey presented the 2026 2nd Quarter Financial Report.

Cost of Treatment (J-2)

Commissioner Majeska discussed the cost of treatment and requested staff to find the exact dollar amount.

Billed vs. Treated (J-3)

Commissioner Majeska discussed our total wastewater amount treated and how much we bill for.

FIELD (K)

No report in agenda.

PLANT/FACILITIES (L)

Replacement Diffuser Sleeves Purchase (L-1)

Mr. Dempsey requested approval to purchase new diffuser sleeves from Aqua-Aerobics.

Motion: Commissioner Maloney made a motion to approve the request.
Commissioner Majeska seconded the motion.

Vote on Motion:

Commissioner Maloney – Aye
Commissioner Majeska – Aye
Commissioner Hardee – Aye
Commissioner Schwartz – Aye
Chairman Rodriguez – Aye

CAPITAL PROJECTS (M)

No report in agenda.

ENGINEERING (N)

LEGAL (O)

Twin Lakes Stormwater Project ILA (Reso. 04-2026) (O-1)

Mr. Mulick presented Resolution 04-2026.

Motion: Commissioner Hardee made a motion to adopt Resolution 04-2026.
Commissioner Maloney seconded the motion.

Vote on Motion:

Commissioner Hardee – Aye
Commissioner Maloney – Aye
Commissioner Majeska – Aye
Commissioner Schwartz – Aye
Chairman Rodriguez – Aye

Motion: Commissioner Hardee made a motion to approve Monroe County ILA Twin Lakes Stormwater Project for \$80,000.
Commissioner Maloney seconded the motion.

Vote on Motion:

Commissioner Maloney – Aye
Commissioner Hardee – Aye
Commissioner Majeska – Aye
Commissioner Schwartz – Aye
Chairman Rodriguez – Aye

COMMISSIONER ITEMS (P)

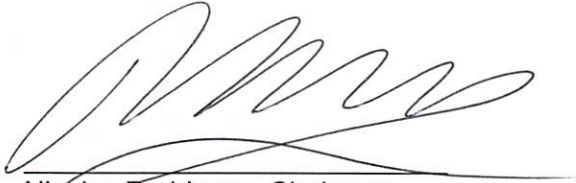
No report in agenda.

ROUNDTABLE DISCUSSION (Q)

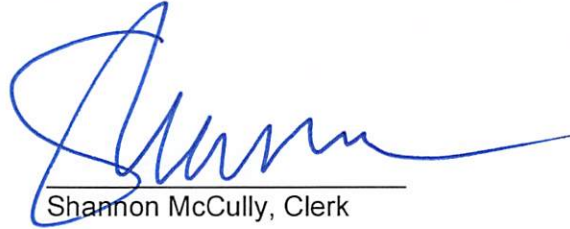
Commissioner Majeska confirmed Resolution 05-2026 & 06-2026 for Publix in Tavernier are scheduled for the May 19th Board meeting.

ADJOURNMENT (R)

The meeting was adjourned at 5:39 p.m.



Nicolas Rodriguez, Chairman



Shannon McCully, Clerk





Laydown May 5, 2026
Agenda Item O-1

Memorandum

Date: May 5, 2026
To: Peter Rosasco, General Manager
From: Richard Lindsay, Project Engineer
CC:
Regarding: Twin Lakes Stormwater Project ILA – Additional Pricing Proposal

This memorandum is being presented to provide the WSP cost proposal that was received by Apex on April 30th, after Agenda Item O-1 had been prepared by Nick Mullick.

Attached to this memorandum is WSP's proposal for the design of the conflict structure along Shaw Drive, which is intended to resolve the identified conflict between the KLWTD vacuum main and Monroe County's proposed stormwater system.

This laydown item should be considered supplemental to the Interlocal Agreement and RCO Nos. 15–18 provided under Agenda Item O-1. The WSP design proposal is in the amount of \$6,000, which Monroe County is requesting to be reimbursed through the Interlocal Agreement in addition to the costs associated with RCO Nos. 15–18.

Attachment(s): WSP Design Proposal for Design of a Conflict Structure on Shaw Drive



April 28, 2026

Proposal No. 2026US608071

Brandon Curll

Key Largo Wastewater Treatment Plant
103355 Overseas Hwy.
Key Largo, FL 33037

REF: DESIGN OF A CONFLICT STRUCTURE LOCATED ALONG SHAW DRIVE IN KEY LARGO

Dear Mr. Curll


WSP USA Inc. (WSP) is pleased to submit this proposal to Key Largo Wastewater Treatment District (KLWTD) for the design of a conflict structure located along Shaw Drive in Key Largo.

The services include designing a conflict structure along Shaw Drive in Key Largo. The conflict structure will avoid a conflict between a 6" vacuum sewer line and a 15" proposed stormwater drainage pipe, which is part of an overall Monroe County drainage improvement project for the Twin Lakes Subdivision. The design includes sizing the conflict structure to allow the existing 6" vacuum sewer line to pass through the proposed conflict structure, while the proposed 15" is discontinued through the structure. The scope of work also includes providing a red-marked-up drainage plan with all details necessary for the contractor to prepare a set of shop drawings. It also includes coordinating with all project stakeholders, reviewing and approving shop drawings, responding to questions from KLWTD and the contractor, and including the conflict structure as part of the record drawings, which will be prepared at the end of the project.

Based on our experience and understanding of the project requirements, we propose to perform the outlined scope of services for a lump sum of \$6,000. We will begin work on this effort with authorization to proceed, to avoid further delays on the Twin Lakes Roadway and Drainage improvement project.

If the terms and conditions outlined in the attached Agreement for Consulting Services are satisfactory, please sign where indicated and return. WSP will return one fully executed original to you for your records.

WSP USA Inc.


Luis Soto, PE
Sr. Vice-President


Greg Corning, PE
Assistant Vice President, FL Civil Design Team Lead

LS/GC/sg

Attachments: WSP Agreement for Consulting Services

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proposal_2026us608071_04-28-2026.docx



AGREEMENT FOR CONSULTING SERVICES (EARTH AND ENVIRONMENT)

..... ("CLIENT") and
WSP USA Inc. ("CONSULTANT") agree
this ____ day of _____, 20____ that the following terms and conditions will apply to any services,
including subsequent services and changes, (collectively "Services") to be provided by CONSULTANT relating to Proposal No.
2026US608071 dated April 28, 2026 (collectively
the "Agreement"):

1. STANDARD OF CARE

Services performed by CONSULTANT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by other reputable professionals practicing contemporaneously, under similar conditions, in the same locality, subject to the time limits and financial, physical, or other constraints applicable to the Services. No warranty, guaranty, or representation, express or implied is made or intended by this Agreement, or in any communication (oral or written), report, opinion, document or instrument of service, and the same are specifically disclaimed, including the implied warranties of merchantability and fitness for a particular purpose.

2. INVOICES AND PAYMENT TERMS

- A. Unless otherwise specified in any proposal, CONSULTANT will submit monthly invoices to CLIENT and a final bill upon completion of Services. CLIENT shall notify CONSULTANT within ten (10) days of receiving an invoice of any dispute with the invoice and the parties shall promptly resolve any disputed items. If notice is not received within (10) days of receiving the invoice, the invoice is deemed to be correct, and CLIENT shall pay CONSULTANT the full sum according to the invoice. Full payment is due prior to delivery of CONSULTANT'S final deliverable. All monies due to CONSULTANT shall be paid in US \$ (Dollars) unless specifically detailed otherwise. CLIENT shall pay all conveyance, transfer and recording fees and taxes, if any, imposed on any transfer of, or construction, on property contemplated by this Agreement. Payment on undisputed invoice amounts is due upon receipt of invoice by CLIENT and is past due thirty (30) days from the date of the invoice. CLIENT agrees to pay a finance charge of one and one-half percent (1-1/2%) per month (18% per annum) compounded daily, or the maximum rate allowed by law, on past due accounts. If payment remains past due sixty (60) days from the date of the invoice, then CONSULTANT shall have the right to suspend or terminate all Services under this Agreement, without prejudice or penalty. CLIENT will pay all reasonable demobilization and other suspension or termination costs. CLIENT agrees to pay attorneys' fees, legal costs and all other collection costs incurred by CONSULTANT in pursuit of past due payments.
- B. Where the cost estimate for the Services is "not to exceed" a specified sum, CONSULTANT shall notify CLIENT before each limit is exceeded, and shall not continue to provide Services beyond such limit unless CLIENT authorizes an increase in the amount of the limitation. If a "not to exceed" limitation is broken down into budgets for specific tasks, the task budget may be exceeded without CLIENT authorization as long as the total limitation is not exceeded.
- C. If CONSULTANT is required by the CLIENT to provide additional services outside the scope of the Services set out in the proposal, the CLIENT shall make payment according to the hourly rates and sums set out in the proposal.
- D. Support for depositions, response to Subpoenas, legal or regulatory proceedings, and expert testimony shall be charged at 150% of the labor rates set forth in the proposal.

3. CHANGES

CLIENT and CONSULTANT recognize that it may be necessary to modify the scope of Services, schedule, and/or cost estimate proposed in this Agreement. To the extent such modifications change the Services, schedule, and/or the cost, the parties shall mutually agree upon equitable adjustment as appropriate under the circumstances. CONSULTANT shall notify CLIENT in a timely manner when it has reason to believe a change to the Agreement is warranted. CONSULTANT shall prepare a change order



request outlining the changes to the scope, schedule, and/or cost. CLIENT has a duty to promptly consider the change order request and advise CONSULTANT in a timely manner in writing on how to proceed. If, after a good faith effort by CONSULTANT to negotiate modifications to the scope of Services, schedule, and/or cost estimate, an agreement has not been reached with the CLIENT, then CONSULTANT shall have the right to terminate this Agreement, without prejudice or penalty, upon written notice to the CLIENT. CONSULTANT agrees to exercise diligence in the performance of its Services consistent with the agreed upon project schedule, subject to the exercise of the generally accepted standard of care for performance of such services, as stated in Article 1, Standard of Care.

4. DELAYS AND FORCE MAJEURE

- A. If site or other conditions prevent or inhibit performance of Services or if unrevealed hazardous materials or differing site conditions are encountered, Services under this Agreement may be delayed. The schedule and contract completion date shall be extended accordingly, and CLIENT shall pay CONSULTANT for Services performed to the delay commencement date plus reasonable delay charges. Delay charges shall include personnel and equipment rescheduling and/or reassignment adjustments and all other related costs incurred including but not limited to, labor and material escalation, and extended overhead costs, attributable to such delays. CLIENT shall not hold CONSULTANT responsible for damages or delays in performance caused by acts or omissions of CLIENT, its subcontractors, site conditions or conditions related to unrevealed hazardous materials which prevent or inhibit performance of Services.
- B. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as governmental authorities, regulatory agencies, civil or labor unrest, epidemics or pandemics, acts of God, nature, or terror, disruptions of the Internet, electronic telecommunications or hosting services or any other events that are beyond the reasonable control of the parties. In the event of any such delays, then the party whose performance is delayed or impaired by such condition shall give prompt written notice to the other party as to the nature and anticipated extent of the delay or impairment. CONSULTANT shall be granted a time extension, and the parties will negotiate an equitable adjustment to the price of any affected Services, where appropriate, based upon the effect of the Force Majeure on CONSULTANT's performance.
- C. Delays in excess of thirty (30) days within the scope of this Article shall, at the option of either party, make this Agreement subject to termination or to renegotiation.

5. INDEPENDENT JUDGMENTS OF CLIENT

If the Services include the collection of samples and data, then CONSULTANT'S obligation to perform those Services is subject to CLIENT's assumption of all Subsurface Risks (such risks being more fully described in Article 12, Subsurface Risks). CONSULTANT will not be responsible for the independent conclusions, interpretations, interpolations or decisions of CLIENT, or others, relating to the Services. Under no circumstances do CONSULTANT'S Services include making any recommendation or giving any advice as to whether CLIENT should or should not proceed with any transaction regarding any site related to the Services. CLIENT assumes all responsibility and risk associated with decisions it makes based on the Services.

6. INDEMNIFICATION

- A. To the maximum extent allowed by law, CONSULTANT agrees to indemnify, but not defend, CLIENT and its officers, directors, and employees from and against all claims, damages, losses, or expenses arising from personal injury, death, or damage to third-party property, and for reimbursement of defense costs, to the extent that all such claims, damages, losses, expenses, or costs are finally determined to be proximately caused by CONSULTANT'S negligence. Such indemnification, as limited by Article 7, Limitation of Liability, shall be CLIENT's sole and exclusive remedy against CONSULTANT.
- B. To the maximum extent allowed by law, CLIENT shall, at all times, defend, indemnify and save harmless CONSULTANT and its subcontractors, consultants, agents, officers, directors and employees from and against all claims, damages, losses and expenses (including but not limited to reasonable attorneys' fees, and court and arbitration costs), arising out of or resulting from the Services of CONSULTANT, including but not limited to claims made by third parties, or any claims against CONSULTANT arising from the acts, errors or omissions of CLIENT, its employees, agents, contractors and subcontractors or



others. To the fullest extent permitted by law, such indemnification shall apply regardless of breach of contract or strict liability of CONSULTANT. Such indemnification shall not apply to the extent that such claims, damages, losses, or expenses are finally determined to be proximately caused by CONSULTANT'S negligence.

7. LIMITATION OF LIABILITY

- A. CLIENT shall immediately notify CONSULTANT in writing of any deficiencies or suspected deficiencies arising directly or indirectly from CONSULTANT'S negligent acts, errors, or omissions. Failure by CLIENT to notify CONSULTANT shall relieve CONSULTANT of any further responsibility and liability for such deficiencies. To the extent permitted by law, CLIENT and CONSULTANT agree that all liability arising directly or indirectly from this Agreement or the Services of CONSULTANT shall expire no later than one (1) year from the date ofCONSULTANT'S acts, errors, or omissions or prior to the last date allowed in the applicable statute of limitation, whichever occurs first in time.
- B. CLIENT AGREES TO LIMIT THE LIABILITY OF CONSULTANT, ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONSULTANTS AND SUBCONTRACTORS ("CONSULTANT GROUP") TO CLIENT, ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONSULTANTS AND SUBCONTRACTORS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHICH ARISES FROM CONSULTANT'S ACTS, NEGLIGENCE, ERRORS OR OMISSIONS, SUCH THAT THE TOTAL AGGREGATE LIABILITY OF THE CONSULTANT GROUP TO ALL THOSE NAMED SHALL NOT EXCEED FIFTY THOUSAND DOLLARS (\$50,000) OR CONSULTANT'S TOTAL FEE FOR THE SERVICES RENDERED UNDER THIS AGREEMENT, WHICHEVER IS GREATER.
- C. NEITHER PARTY SHALL BE RESPONSIBLE TO THE OTHER FOR LOST REVENUES, LOST PROFITS, COST OF CAPITAL, CLAIMS OF CUSTOMERS, LOSS OF DATA OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES.
- D. In consideration of the promises contained herein and for other separate, valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLIENT acknowledges and agrees that (i) but for the Limitation of Liability, CONSULTANT would not have performed the Services; (ii) it has had the opportunity to negotiate the terms of the Limitation of Liability; (iii) the Limitation of Liability amount may differ from the amount of professional liability insurance carried by CONSULTANT; (iv) the Limitation of Liability is merely a limitation of, and not an exculpation from, CONSULTANT's liability; (v) the Limitation of Liability is an agreed remedy; and (vi) the Limitation of Liability amount is neither nominal nor a disincentive to CONSULTANT performing the Services in accordance with the Standard of Care.

8. INSURANCE

- A. CONSULTANT maintains insurance coverage with the following limits:
 - (i) Workers' Compensation in compliance with statutory limits
 - (ii) Automobile Liability

Combined Single Limit	\$5,000,000
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 - (iii) Commercial General Liability:

Each Occurrence	\$3,500,000
General Aggregate	\$7,000,000
 - (iv) Professional Liability Insurance

Any One Claim	\$1,000,000
Policy Aggregate	\$3,000,000
- B. CLIENT shall not require CONSULTANT to sign any document or perform any Service which in the judgment of CONSULTANT would risk the availability or increase the cost of its Professional or Commercial General Liability insurance.

9. PROFESSIONAL WORK PRODUCT

- A. The Services provided by CONSULTANT are intended for the exclusive use by CLIENT to the extent intended by the Services. All documents, including but not limited to, reports, plans, designs, boring logs, field data, field notes, laboratory test data, calculations, and estimates and all electronic media prepared by CONSULTANT are considered its professional work product (the "Documents"). CONSULTANT retains all rights to the Documents.



- B. CLIENT understands and acknowledges that the Documents are not intended or represented by CONSULTANT to be suitable for reuse by any party, including, but not limited to, the CLIENT, its employees, agents, subcontractors, or subsequent owners on any extension of a specific project not covered by this Agreement or on any other project, whether CLIENT's or otherwise, without CONSULTANT'S prior written permission. CLIENT agrees that any reuse unauthorized by CONSULTANT will be at CLIENT's sole risk and that CLIENT will defend, indemnify, and hold CONSULTANT harmless from any loss or liability resulting from the reuse, misuse, or negligent use of the Documents.
- C. If included as part of the scope of Services, CONSULTANT will provide cost estimates based upon CONSULTANT's experience on similar projects, which are not intended for use by CLIENT or any other party in developing firm budgets or financial models, or in making investment decisions. Such cost estimates represent only CONSULTANT's judgment as a professional and, if furnished, are only for CLIENT's general guidance and are not guaranteed as to accuracy.

10. DATA AND INFORMATION

- A. **Project Information.** Before the commencement of Services by CONSULTANT or its subcontractors, and continuing thereafter, CLIENT shall immediately notify CONSULTANT of any known or potential health or safety hazards, hazardous substances or conditions existing on or near the project site. Furthermore, CLIENT shall promptly provide CONSULTANT with all relevant, reports data, studies, plans, specifications, documents, and information in its possession relating to the site history, to the project, and to the environmental, geologic, and geotechnical surface and subsurface conditions of the site and surrounding areas ("Project Information") or any other information related to the project that CONSULTANT may reasonably request. CONSULTANT shall be entitled to rely upon the Project Information provided by CLIENT or others and CONSULTANT assumes no responsibility or liability for the accuracy or completeness of such. CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify, and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from incomplete Project Information, errors, omissions, or inaccuracies in the Project Information. CONSULTANT will not be responsible for any interpretations or recommendations generated or made by others, which are based, whole or in part, on CONSULTANT'S data, interpretations, or recommendations.
- B. **Personal Information.** Each Party shall at all times comply with the requirements of applicable personal privacy legislation with respect to the collection, use and disclosure of personal information in connection with this Agreement. Client warrants that any such personal information (including personally identifiable information) was processed in compliance with all applicable laws.

11. RIGHT OF ENTRY

CLIENT will provide for the right of entry for CONSULTANT, its subcontractors, and all necessary equipment in order to complete the Services under this Agreement. If CLIENT does not own the site, CLIENT shall obtain permission and execute any required documents for CONSULTANT to enter the site and perform Services. CLIENT shall at its cost and at such times as may be required by CONSULTANT for the successful and timely completion, to the extent applicable, of the Services; (i) provide an adequate area for CONSULTANT's site office facilities, equipment storage, and employee parking; (ii) furnish all construction utilities and utilities releases necessary for the Services; (iii) provide the locations of all subsurface structures, including piping, tanks, cables, and utilities; (iv) approve all locations for digging and drilling operations; and (v) obtain all permits and licenses necessary and required to be taken out in CLIENT's name for the Services. It is understood by CLIENT that in the normal course of work some surface damage may occur, the restoration of which is not part of this Agreement.

12. SUBSURFACE RISKS

- A. Special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program implemented in accordance with a professional Standard of Care may fail to detect certain conditions. The environmental, geological, geotechnical, geochemical, hydrogeological, and other conditions that CONSULTANT interprets to exist between sampling points may differ from those that actually exist. Furthermore, CLIENT recognizes that, passage of time, natural occurrences, direct or indirect human intervention at or near the site may substantially alter discovered conditions.
- B. Subsurface sampling may result in damage or injury to underground structures or utilities and unavoidable contamination of certain subsurface areas not known to be previously contaminated such as, but not limited to, a geologic formation, the



groundwater, or other hydrous body. CONSULTANT will adhere to the standard of care during the conduct of any subsurface investigation. When the Services include subsurface sampling, CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify, and hold CONSULTANT harmless from any claim or liability for injury, loss, or expense (including but not limited to legal fees) which may arise as a result of alleged or actual cross-contamination caused by any subsurface investigation or any damage or injury to underground structure, formation, body, or utilities.

13. DISPOSAL OF SAMPLES, MATERIALS AND CONTAMINATED EQUIPMENT

- A. All samples obtained pursuant to this Agreement remain the property and responsibility of CLIENT. Uncontaminated soil and rock samples or other specimens may be disposed of thirty (30) days after submission of the work product due pursuant to the Proposal. Upon written request, CONSULTANT will store uncontaminated samples for longer periods of time or transmit the samples to CLIENT for a mutually acceptable charge.
- B. All contaminated samples and materials (containing or potentially containing hazardous constituents), including, but not limited to soil cuttings, contaminated purge water, and/or other environmental wastes obtained pursuant to this Agreement remain the property and responsibility of CLIENT and shall be returned to CLIENT for proper disposal. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of CLIENT. All such equipment shall be charged and turned over to CLIENT for proper disposal. Alternate arrangements to assist CLIENT with proper disposal of such equipment, materials and samples may be made at CLIENT's direction and expense unless otherwise specified in a separate Agreement or addendum to this Agreement. In such event, CLIENT agrees to have a representative available to sign all certifications, manifests, and other documents reasonably required by CONSULTANT and associated with the transportation, treatment and disposal, or handling of hazardous substances, waste, or materials from the project property site, and derived from CONSULTANT'S performance of the Services, including investigation derived wastes. If such CLIENT representative is unavailable and CONSULTANT is required to execute any such documents on CLIENT's behalf, CLIENT acknowledges that CONSULTANT shall be acting only as offeror on behalf of CLIENT. It is understood and agreed that CONSULTANT is not, and has no responsibility as, a handler, generator, operator, treater, storer, arranger, transporter, or disposer of hazardous substances, waste or materials found or identified at or around the project site property. CLIENT agrees to waive any claim against CONSULTANT and to defend, indemnify and hold CONSULTANT harmless from and against any claims, losses, damages, expenses (including, but not limited to, legal fees), and liabilities of any type arising out of the discovery and disposal of any alleged or actual hazardous substances, wastes or materials found or identified at or around the project site property.

14. CONTROL OF WORK AND JOB-SITE SAFETY

- A. CONSULTANT shall be responsible only for its activities and that of its employees and subcontractors. CONSULTANT'S Services under this Agreement are performed for the sole benefit of the CLIENT and no other entity shall have any claim against CONSULTANT because of this Agreement or the performance or nonperformance of Services hereunder. CONSULTANT will not direct, supervise or control the work of other consultants and contractors or their subcontractors. CONSULTANT does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any other contractor, subcontractor, supplier, or other entities furnishing materials or performing any work on the project.
- B. Insofar as job site safety is concerned, CONSULTANT is responsible only for the health and safety of its employees and subcontractors. Nothing herein shall be construed to relieve CLIENT or any other consultants or contractors from their responsibilities for maintaining a safe job site. CONSULTANT shall not advise on, issue directions regarding, or assume control over safety conditions and programs for others at the job site. Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT or its employees and subcontractors, shall be construed to imply that CONSULTANT controls the operations of others or has any responsibility for job site safety.

15. PUBLIC RESPONSIBILITY

CLIENT has a duty to comply with applicable codes, standards, regulations, and ordinances, with regard to public health and safety. While CONSULTANT performs the Services, it will endeavor to alert CLIENT to any matter of which CONSULTANT becomes aware and believes requires CLIENT's immediate attention to help protect public health and safety, or which CONSULTANT believes requires CLIENT to issue a notice or report to certain public officials, or to otherwise comply with



applicable codes, standards, regulations, or ordinances. If CLIENT decides to disregard CONSULTANT'S recommendations in these respects, (i) CONSULTANT shall determine in its sole judgment if it has a duty to notify public officials, and (ii) CONSULTANT has the right immediately to terminate this Agreement upon written notice to the CLIENT and without penalty. In states where there is a legal obligation for a licensed professional (employed by CONSULTANT or CONSULTANT as a company) to report an observed release of a hazardous material or petroleum product to the environment, an imminent threat to human health or the environment, or other incident (as defined by applicable law) to a regulatory agency, CONSULTANT shall make reasonable efforts to first notify the CLIENT and its Counsel regarding the nature and timing of the required notification, but in any case will comply with the applicable legal requirements with regard to reporting.

16. NOTIFICATION AND DISCOVERY OF HAZARDOUS MATERIALS

- A. Prior to commencing the Services and as required by Article 10, Data and Information, CLIENT shall furnish to CONSULTANT all documents and information known to CLIENT that relate to past or existing conditions of the site and surrounding area, including the identity, location, quantity, nature, or characteristics of any hazardous materials or suspected hazardous materials or subterranean utilities. CONSULTANT may rely on such information and documents. CLIENT hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed CONSULTANT.
- B. CLIENT acknowledges that if unanticipated hazardous materials or suspected hazardous materials are discovered on the project site property or on properties surrounding or adjacent to such site, it is CLIENT'S responsibility, and not CONSULTANT'S, to inform the owner of any affected property not owned by CLIENT of such discovery. CLIENT also recognizes that any such discovery may result in a significant reduction of the property's value. CLIENT waives any claim against CONSULTANT and agrees to defend, indemnify, and hold harmless CONSULTANT from any claim or liability for injury or loss of any type arising from the discovery of hazardous materials or suspected hazardous materials on the project property site or on surrounding property, whether or not owned by CLIENT. CLIENT agrees that discovery of unanticipated hazardous materials shall constitute a changed condition for which CONSULTANT shall be fairly compensated.

17. TERMINATION

Either party may terminate this Agreement as a result of a material breach of the other party if the other party does not commence and continue to cure the breach within thirty (30) days of receipt of written notice of the breach from the non-breaching party. In the event of termination, CONSULTANT shall be paid for Services performed to the termination notice date, reasonable termination expenses, and a portion of its anticipated profits not less than the percentage of the contract services performed as of the termination notice date. CONSULTANT may complete such analyses and records as are necessary to complete its files and may also complete a report on the Services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of CONSULTANT in completing such analyses, records, and reports.

18. DISPUTES

- A. **Dispute Resolution by Senior Management.** Any controversy, claim, or disagreement arising out of or relating to this Agreement shall be referred to senior management of each Party for a resolution. If the senior management is able to resolve the dispute, such resolution shall be binding on the Parties. In the event the senior management is unable to resolve the dispute within thirty (30) business days (or such other period as the Parties may agree upon) of referral, each Party shall have the right to pursue any other rights or remedies that may be available at law or equity, subject to this Article.
- B. **Litigation.** This Agreement shall be deemed to be a contract made under the laws of the state of New York, and for all purposes shall be construed in accordance with the laws thereof. Client agrees that any and all disputes between the parties under or relating to the terms and conditions of this Agreement shall be fully and completely adjudicated in any federal or state court located in the state of New York and Client completely and entirely waives any and all jurisdictional defenses it may have now or in the future to the jurisdictional reach of such courts. CLIENT hereby waives the right to trial by jury for any disputes arising out of this Agreement.
- C. **Attorneys' Fees and Costs.** In the event that one party makes a claim against the other, at law or otherwise, and then fails to prove such claim, then the prevailing party shall be entitled to all costs, including attorneys' fees incurred in defending



against the claim. The term “prevailing party” shall be defined as the party that recovers at least fifty percent (50%) of the amount of its claim as identified on the first day of any trial. Conversely, any party defending a claim shall be determined the “prevailing party” if the party asserting a claim fails to recover at least fifty percent (50%) of the amount of its claim as identified on the first day of any trial.

19. INTELLECTUAL PROPERTY

- A. If the Services require CONSULTANT to provide CLIENT with the right to use or access proprietary CONSULTANT software, programs, information management solutions, hosting services, technology, designs, information, or data (“CONSULTANT Products”), CONSULTANT grants CLIENT during the term of the project a non-exclusive, non-transferable, non-assignable license to use the CONSULTANT Products for CLIENT’s internal purposes, solely in connection with the Services. Except for this limited license, CONSULTANT expressly reserves all other rights in and to the CONSULTANT Products.
- B. CONSULTANT’S Right to Use CLIENT Materials - If the Services require CLIENT to provide CONSULTANT with the right to use or access proprietary CLIENT software, programs, technology, information, or data (“CLIENT Products”), CLIENT grants CONSULTANT a perpetual, non-exclusive, non-transferable, non-assignable, royalty free world-wide license to use and access the CLIENT Product as necessary to provide CLIENT with Services.
- C. Intellectual Property General - CONSULTANT shall own all Intellectual Property (as hereinafter defined) associated with the Services and the CONSULTANT Products, together with any modifications, updates, or enhancements to said Intellectual Property. CONSULTANT grants no right or license to such Intellectual Property to CLIENT except as expressly provided in this Agreement. CLIENT conveys to CONSULTANT any interest in any such Intellectual Property rights that, notwithstanding the foregoing, would otherwise be deemed by law to vest in CLIENT. “Intellectual Property” includes patents, patent applications, trademarks, trademark applications, copyrights, moral rights or other rights of authorship and applications to protect or register the same, trade secrets, industrial rights, know-how, privacy rights and any other similar proprietary rights under the laws of any jurisdiction in the world. CONSULTANT may use and publish the CLIENT’s name and give a general description of the Services rendered by CONSULTANT for the purpose of informing other clients and potential clients of CONSULTANT’S experience and qualifications.
- D. CONSULTANT shall use reasonable efforts to provide the Services without infringing on any valid patent or copyright and without the use of any confidential information that is the property of others; provided, however, reasonable efforts of CONSULTANT shall not include a duty to conduct or prepare a patent or copyright search and/or opinion. If CONSULTANT performs its Services in a manner consistent with the above, then to the fullest extent permitted by law, CLIENT shall indemnify, defend, and hold harmless CONSULTANT and its officers, directors, agents and employees against all liability, cost, expense, attorneys’ fees, claims, loss, or damage arising from any alleged or actual patent or copyright infringement resulting from the Services under this Agreement.

20. INFORMATION MANAGEMENT

Some CONSULTANT Products may be offered to CLIENT via the Internet and some CONSULTANT Products may utilize wireless radio communications. Atmospheric, meteorological, topographical, and other conditions can affect the performance of any wireless device, software, or technology (including, but not limited to information management solutions, hosting services, ftp, and extranet services), just as application size, traffic, bottlenecks, and other conditions can affect Internet access and upload and download speeds. CLIENT acknowledges that these types of conditions and other similar conditions are beyond the reasonable control of CONSULTANT and that CONSULTANT makes no representations or guarantees that CLIENT will be able to access any particular CONSULTANT Product at any given time without any error or interruption.

21. MISCELLANEOUS

- A. This Agreement supersedes all other agreements, oral or written, and contains the entire agreement of the parties. No cancellation, modification, amendment, deletion, addition, waiver, or other change in this Agreement shall have effect unless specifically set forth in writing signed by the party to be bound thereby. Titles in this Agreement are for convenience only.



- B. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns provided that it may not be assigned by either party without consent of the other. It is expressly intended and agreed that no third-party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this Agreement.
- C. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between the CLIENT and CONSULTANT. The relationship between the CLIENT and CONSULTANT is that of an independent contractor and client, respectively, and under no circumstances shall either party be deemed agents or representatives of the other. Neither party shall have the right to enter into any contracts or commitments in the name of or on behalf of the other party in any respect whatsoever, unless otherwise agreed by the terms of this Agreement.
- D. Unless otherwise agreed to in writing by CONSULTANT and CLIENT, neither party shall directly or indirectly solicit, hire or retain, or knowingly cause a third party to solicit, hire or retain, during the term of this Agreement and for a period of one (1) year after the date on which this Agreement terminates, any employee of the other party who works on the preparation of the Proposal or otherwise performs Services under or in connection with this Agreement. Nothing herein shall prevent either party from hiring any individual who responds to a general advertisement for services.
- E. The words in this Agreement shall bear their natural or defined meaning. The parties have each had full opportunity of obtaining legal advice and accordingly any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.
- F. CLIENT acknowledges and agrees that CONSULTANT can retain subconsultants, who may be affiliated with CONSULTANT, to provide Services for the benefit of CONSULTANT. CONSULTANT will be responsible to CLIENT for the Services and work done by all of its subconsultants and subcontractors, collectively to the maximum amount stated in Article 7 Limitation of Liability. CLIENT agrees that it will only assert claims against and seek to recover losses, damages, or other liabilities from CONSULTANT and not CONSULTANT'S affiliated companies.
- G. No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.
- H. All representations and obligations (including without limitation the obligation of CLIENT to indemnify CONSULTANT in Article 6 and the Limitation of Liability in Article 7) shall survive indefinitely the termination of the Agreement. CLIENT acknowledges that it may not use CONSULTANT'S name or any reference to the Services in any press release or public document without the express, written consent of CONSULTANT.
- I. Any provision, to the extent found to be unlawful or unenforceable, shall be stricken without affecting any other provision of the Agreement, so that the Agreement will be deemed to be a valid and binding agreement enforceable in accordance with its terms.
- J. All questions concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of New York unless the law of another jurisdiction must apply for this Agreement to be enforceable.
- K. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a substitution to any duties, obligations, rights and remedies otherwise available by applicable law.
- L. All notices required or permitted to be given hereunder, shall be deemed to be properly given if delivered in writing via e-mail, regular mail, hand delivery or express courier addressed to CLIENT or CONSULTANT, as the case may be, at the addressee set forth in the Proposal Acceptance Form in regard to the CLIENT, and as listed on the Proposal in regard to CONSULTANT, with postage thereon fully prepaid if sent by mail or express courier.
- M. Any signature (including any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record) hereto or to any resulting Work Order, and any contract formation or record-keeping through electronic means shall have the same legal validity and



enforceability as a manually executed signature or use of a paper-based recordkeeping system, to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act. The parties hereby waive any objection to the contrary.

- N. CLIENT represents and warrants that the individual signing this Agreement is an authorized representative of CLIENT and has authority to bind the CLIENT.

22. AUTHORIZATION TO PROCEED

By signing below, CLIENT hereby authorizes CONSULTANT to proceed with the Services outlined in the Proposal and in accordance with this Agreement, which includes terms relating to *payment, limitation of liability, insurance, and indemnity*, among many other important provisions. CLIENT also represents that any “purchase order” type document which CLIENT may issue after executing this Agreement, shall be for administrative or accounting purposes only, and that this Agreement shall supersede any such terms or conditions attached thereto in governing the performance of the Services, and any such terms or conditions shall be void and without binding effect.

_____ (CONSULTANT)	_____ (CLIENT)
_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Title	_____ Title
_____ Date	_____ Date

Please address invoices to:	Please address deliverables & notices* to:
ATTN:	ATTN:
Phone:	Phone:
Email:	Email:

**All notices required or permitted to be given hereunder shall be in writing and shall be delivered in person, sent by facsimile machine, mailed, or emailed and properly addressed and stamped with the required postage to the intended recipient.*