



PROPOSAL FOR PROFESSIONAL SERVICES

Date: 01/18/2024

Charla Salmeron

Aspen Ridge Prep School
705 Austin Ave
Erie, CO 80516

**RE: Aspen Ridge Prep School – Proposed Drive, Parking & Athletic Track
705 Austin Ave, Erie, CO 80516**

Dear Ms. Salmeron,

Topographic, Co. (Topographic) is pleased to submit this proposal to **Aspen Ridge Prep School** (Client) for professional land surveying and civil engineering services relating to the referenced project. It is our understanding the general scope of work is a proposed drive lane, additional parking, and athletic track on the parcel of land adjacent east of Aspen Ridge Prep School to alleviate traffic congestion on approximately 3 acres of land located at 705 Austin Ave, Erie, CO 80516.

The Project Assumptions and Exclusions, Scope of Services and Fee outlined below are based on our preliminary discussions, review of the information received to date, Pre-Application Meeting comments and our understanding of the requirements of the Regulatory Agency having Jurisdiction (RAHJ). The RAHJ for this project will be the School Board and Town of Erie (TOE) for Right-of-way improvements.

We appreciate your consideration of Topographic for these services and look forward to working with you to bring this project to successful completion in a timely and efficient manner. This proposal outlines the terms and conditions of our agreement, as we understand it.

PROJECT ASSUMPTIONS AND EXCLUSIONS

In completing this proposal, Topographic has made the following assumptions and exclusions:

SURVEYING ASSUMPTIONS AND EXCLUSIONS

1. Horizontal control, vertical control and site survey control will be with RTK GPS methods. Vertical accuracy expected $\pm 0.05'$. Aerial mapping: Imagery GSD = $\pm 3\text{cm}$, LiDAR = ± 225 ppsm. Survey control based on NAD83 / NAVD88 datum unless otherwise specified.
2. Boundary information based on record deed/plat information and found monuments. This is not a boundary survey.
3. No underground private utility locating is provided for. Utility locates will be provided by a third-party consultant marking only Tier 1 and Tier 2 utilities as discovered by an 811 Ticket. Nonmetallic pipelines without a tracer wire cannot be located. Topographic would need the utility owner to mark these lines. For engineering utility calls to 811 (such as in this case), it is rare for the utility owner to come out and mark their equipment, usually only maps, sketches and / or drawings are sent. Topographic will show unmarked utilities based on any information provided and mark them as Quality Level C or D. Topographic will locate manholes, inlets and other structures and will show the type, size and invert of the pipe if it is possible to see from looking in the manhole, inlet or structure, if accessible. Sometimes the lids are locked and / or seized shut. Topographic will not damage the utility if it does not readily open, the utility owner would need to come out and open the utility. For safety reasons, our crews are instructed not to enter any of the manholes or vaults.
4. Owner contact and coordination not included.
5. Research by Topographic does not take the place of a title report or title opinion. Easements and other encumbrances may not be shown unless a title report is supplied.
6. The cost and scope of work is open to negotiations and revisions. Additional items not covered in the above scope may be required and are not provided for herein. Any additional services will be at clients' direction, with additional service orders issued, if desired by client.
7. We fully expect the above cost will cover the services described in the scope of work, however situations may arise that are beyond expectations. Therefore, no guarantee is made or implied.
8. The cost and scope is valid for 60 days.

CIVIL ENGINEERING ASSUMPTIONS AND EXCLUSIONS

1. The anticipated area of work is shown below as 'Exhibit A'.
2. This fee is based on information received to date and is subject to change upon additional information or change of scope before final contract is executed.
3. Topographic will act as the Client's prime consultant and be the liaison between the Client and subconsultants. Topographic will manage the subconsultants on behalf of the Client.
4. The property has already been platted. The property is currently zoned Light Industrial (LI), and should not have to be rezoned or replatted for the proposed land use.
5. One (1) new proposed drive entrance connecting to public roads is included, a Right-of-Way permit will be required and is included. Topographic has met with the Town of Erie at the Pre-App meeting and received

some feedback, however, additional services and permits not anticipated may be required that are not included in the base scope of services.

6. Civil engineering design will be based on Town of Erie design standards/requirements. If applicable standards/requirements are not available, Topographic will default to a municipality or entity with more established standards.
7. A topographic design survey suitable for civil engineering design will be provided by Client if service is not provided by Topographic.
8. A geotechnical report for the referenced property suitable for civil engineering design will be provided by Client, including pavement design and drainage recommendations. Topographic will coordinate the scope with the geotechnical engineer.
9. A traffic study, will be required, will be provided by Client. Topographic will coordinate the scope with the traffic engineer.
10. Landscape services are not anticipated and are excluded.
11. Structural design of site elements and retaining walls is excluded.
12. Any off-site water, sanitary sewer or storm drain improvements or extensions are excluded, except as noted below.
13. Based off Pre-App comments, the regional detention pond evaluation and an required design updates to the pond for this development will be performed.
14. Any off-site road improvements or extensions are excluded.
15. A State SWMP Permit is anticipated to be required due to more than 1 acre of disturbance. This is excluded and is assumed for the Contractor to submit SWMP Plans to State. This can be provided as an additional service. Topographic will prepare erosion control plans that can be used in the permit process.
16. Floodplain modeling is excluded.
17. Improvements or changes to the Leyner Cottonwood Number 1 Ditch are not anticipated and are excluded.
18. Traffic Control Plan(s), if required, are excluded.
19. Payment of fees for any purpose, e.g. applications, review and permitting, is excluded.
20. Client or Architect shall be responsible for all reproduction and courier services.
21. A review by the Division of Fire Prevention & Control is not anticipated and is excluded. This can be provided as an Additional Service if required.

SCOPE OF SERVICES

Based on our understanding of the current project status, Topographic proposes to provide the following scope of services:

SURVEYING BASIC SERVICES

1. **Boundary and Topographic Survey:** Topographic will prepare the required survey deliverables for the project as part of this task.
Included in this Item:
 - Project setup and client coordination.
 - Research public records for surveys of record, utilities, maps by others, and survey control.

- Establish two horizontal and vertical survey control points, for future design and construction layout. - Survey datum NAD83 and NAVD88, unless otherwise specified by client.
- Field survey boundary lines and existing conditions. (See Exhibit A)
- Prepare field sketches and pictures.
- Process field survey data.
- Prepare topographic design survey showing all physical features including trees with caliper (>6”), 1’ contours, and spot elevations.
- Provide copies of site pictures, research data and field sketches.
- Provide final electronic files in AutoCAD 2020 and PDF formats.

SURVEYING ADDITIONAL SERVICES (IF REQUESTED)

2. Easement Documents: Based on the property corners for the design survey of the site prepared by our office, Topographic will prepare separate description and exhibit documents for permanent and/or temporary easements required as a part of the development of the site.

CIVIL ENGINEERING BASIC SERVICES

1. Concept Design Phase (30% CD): Based on direction by Client, Topographic will prepare a conceptual Civil Site Plan, Grading & Drainage Plan and concept Utilities Plan for the project as part of this task.

Included in this Item:

- Set up Base files from Survey
- Three (3) meetings with School Staff/Board to finalize conceptual site layout with property boundary, easements, oil well setbacks, proposed drive lane, parking areas, and storm water drainage design, per Client feedback and Pre-Application comments.
- Coordination with Client comments and plan revisions.

Not included in this Item:

- Final construction drawings
- Technical specifications
- Opinion of Probable Construction Cost

2. Preliminary Design Phase (60% CD): Based on direction from Client, Topographic will prepare preliminary Civil construction documents as part of this task.

Included in this Item:

- Preliminary Construction Documents including: cover, demolition plan, site layout, signing & striping, grading & drainage, erosion control, utility & site details.
- Regional Detention Pond Preliminary Drainage Study
- Preliminary Drainage Report, including updates to Detention Pond as required
- Preliminary Technical Specifications
- Opinion of Probable Construction Cost
- Three (3) meetings with Client
- Town of Erie Right-of-Way Permit Application

- Preliminary Submittal to Town of Erie & School Board/District for review
- Attendance of meeting to review RAHJ comments

Not included in this Item:

- Permit fees
- Final construction drawings

3. Final Design Phase (90% & 100% CD): Based on direction from Client & RAHJ Comments, Topographic will prepare final Civil construction documents as part of this task.

Included in this Item:

- Final Construction Documents
- Regional Detention Pond Final Drainage Study
- Final Drainage Report
- Final Technical Specifications
- Opinion of Probable Construction Cost
- Three (3) meetings with Client
- 90% Submittal to Town of Erie/School Board for review
- Attendance of meeting to review RAHJ 90% comments
- 100% For Construction Plan Submittal
- Final Technical Specifications

Not included in this Item:

- Permit fees

4. Bidding Phase: Topographic will answer contractor questions to assist the bid process as part of this task. Construction Documents will be updated per Bid Responses as required.

Included in this Item:

- Attend Bid Meeting and answer questions
- Answer pre-bid and follow up questions until the close date
- Final "For Construction" Construction Documents based on any changes from bid process

Not included in this Item:

- Permit fees
- Opinion of Probable Construction Cost

5. Construction Administration (CA): Topographic will provide construction administration as part of this task.

Included in this Item:

- Attend Pre-Construction Meeting
- Review & response of any RFI's (request for information)
- Review and response of product submittals
- Two (2) Field Observation Visit with Reports
- One (1) Punch Walk with Report
- Record Drawings per Town of Erie requirements

Not included in this Item:

- Permit fees
- Inspection or oversight of construction

Please note the following:

- Topographic shall not at any time supervise or have authority over any Contractor work or jobsite management procedures, nor shall Topographic have authority over or be responsible for the means and methods, or procedures of construction selected or used by the Contractor.
- Topographic neither guarantees the performance of the Contractor nor assumes responsibility for the Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- Topographic shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- Topographic shall not be responsible for the acts or omissions of the Contractor or for any decision or interpretation of the Contract Documents made by the Contractor.
- While at the Site, Topographic's employees and representatives shall comply with the specific applicable requirements of the Contractor's and Owner's safety programs of which Topographic has been informed in writing.

CIVIL ENGINEERING ADDITIONAL SERVICES (IF REQUESTED)

6. Weekly Owner-Architect-Contractor (OAC) Meetings: Topographic will attend OAC meetings acting as the Client's prime consultant when required for weekly updates on progress and obstacles during construction.
7. Stormwater Management Plan (SWMP): Topographic will prepare the state-required SWMP for the project. The Contractor typically prepares this.

FEE

Topographic proposes to provide the specific services described above on a lump sum and hourly fee basis as outlined below:

| Basic Services | Fee (\$) |
|--|----------------------------------|
| Surveying Services | |
| Site Survey (reduced by 75% for charitable donation) | \$9,050.00 /\$2262.50 |
| Additional Surveying Service (Pre-app additional requirements) | \$3,450.00 |
| Utility Locates | \$1,200.00 |
| <i>Surveying Service Total</i> | <i>\$6,912.50</i> |
| Civil Engineering Services | |
| Concept Design Phase (30% CD's) | \$7,507.00 |
| Preliminary Design Phase (60% CD's) | \$25,023.00 |
| Final Design Phase (90 & 100% CD's) | \$18,767.00 |
| Bidding Phase | \$1,877.00 |
| Construction Administration | \$9,383.00 |
| <i>Engineering Services Total</i> | <i>\$62,556.00</i> |
| TOTAL | \$69,468.50 |
| Additional Services (If Requested) | |
| Weekly OAC Meetings | HOURLY |
| SWMP | \$2,500.00 |
| Easement Documents (each) | \$750.00 |

Notes:

- Reimbursables have been included in the Basic Services.
- If subconsultants are required/requested, Client will be invoiced actual fee plus a 15% markup to cover administrative and coordination costs.

CIVIL ENGINEERING RATES CURRENT: 01/01/2024

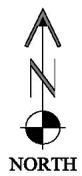
STANDARD HOURLY RATE SCHEDULE

| | |
|---------------------|------------|
| Director | 225.00/hr. |
| Principal | 200.00/hr. |
| Sr. Project Manager | 165.00/hr. |
| Project Manager | 155.00/hr. |
| Project Engineer | 145.00/hr. |
| Civil Engineer II | 130.00/hr. |
| Civil Engineer I | 120.00/hr. |
| Project Coordinator | 145.00/hr. |
| Civil Designer II | 120.00/hr. |
| Civil Designer I | 110.00/hr. |
| Drafter II | 95.00/hr. |
| Drafter I | 85.00/hr. |
| Administrative | 65.00/hr. |

REIMBURSABLE EXPENSES

| | |
|---|-------------------|
| Mileage | IRS Standard Rate |
| Reproduction | Cost + 10% |
| Courier Services | Cost + 10% |
| Postage | Cost + 10% |
| All other 3 rd party reimbursable Services | Cost + 10% |

EXHIBIT A





TERMS AND CONDITIONS

Please note that the attached Exhibit 1 (Terms and Conditions) are set forth below, and are attached hereto and incorporated by reference to be made a part of this agreement. By execution below, the Client acknowledges that it has been informed, has read, and fully understands and consents to the attached Exhibit 1 (Terms and Conditions).

If you find this acceptable, please sign and date where indicated below and return a copy to our office. Topographic appreciates the opportunity to assist you with this project. Please contact me if you have any questions or concerns about this proposal.

Sincerely,

Topographic, Co.

Patrick O. Smith, PE
Principal

AGREED AND ACCEPTED BY:

(Signature of Client)

Title

Date

EXHIBIT 1 - TERMS AND CONDITIONS

Aspen Ridge Prep School (“CLIENT”) agrees to engage Topographic Co. (“TCO”) to provide professional engineering, land surveying or consulting services in connection with CLIENT’s Aspen Ridge Prep School - Proposed Drive (“Project”) as described in the Proposal above. Nothing in this Agreement shall create a contractual relationship with, or any cause of action in favor of, any individual or entity not a party to this Agreement. This Agreement, which includes this Exhibit 1, represents the entire and integrated agreement and supersedes any prior negotiations, representations or agreements. This Agreement, which includes this Exhibit 1, is between the CLIENT and TCO.

This Agreement shall become effective upon execution by CLIENT or when CLIENT provides written authorization to TCO to begin its work. If the Agreement is not executed by CLIENT within thirty (30) days of the date tendered by TCO, it shall become invalid unless: (1) TCO extends the time in writing; or (2) at the sole option of TCO, TCO accepts CLIENT’s oral authorization to proceed with the services, in which event the terms of the oral authorization shall be presumed to include all the terms of this Agreement. TCO’s performance of the services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization.

1. ENGINEERING, LAND SURVEYING AND CONSULTANT SERVICES

- a. TCO will perform its services as expeditiously as is consistent with the standard of care and diligence normally practiced by recognized professional engineering/land surveying firms in performing services of a similar nature, in the same locality of the Project site, under similar circumstances. TCO makes no (and indeed disclaims all) warranties or guarantees, expressed or implied, with regard as to the quality of the services performed, or work product provided under this Agreement.
- b. The services provided by TCO are purely professional services, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. TCO shall perform the services within a timely manner consistent with sound professional practices.
- c. Many permitting agencies provide specified review time lines that are often not met by the review agencies. As a result, TCO makes no warranties or representations as to time required or the ability to obtain permits or approvals. TCO can assist CLIENT in expediting the review process as an additional service billed on an hourly basis. Occasionally new or revised policies or procedures are established by review agencies. Any work required to resolve contested issues resulting from new regulations, new interpretations of existing regulations or changes in in-house agency policy and procedures shall be considered additional services billed on an hourly basis. CLIENT requested site plan or design changes after the submittal of civil plans for permits shall also be additional services to be billed on an hourly basis. CLIENT agrees that, while TCO agrees to employ reasonable efforts to accomplish its work in a timely manner, TCO shall in no way be liable for damages of any kind for delays, or for any failure to meet milestones established under this Agreement, the failure to obtain a permit from any governmental entity, or the failure to obtain a permit in any specified amount of time.

- d. Evaluations of CLIENT’s budget, or estimates of Project costs prepared by TCO, if any, represent TCO’s judgment as a professional engineer. It is recognized that TCO has no control over the cost of labor or materials, contractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, TCO cannot and does not warrant or represent that bids or negotiated prices will not vary from CLIENT’s budget or TCO’s cost estimates, and CLIENT expressly agrees that TCO shall have no liability for any failure of bids or actual construction costs to comply with CLIENT’s budget or TCO’s cost estimates.

2. CLIENT RESPONSIBILITY

- a. CLIENT represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to perform its obligations under this Agreement.
- b. CLIENT shall provide TCO the following:
 - i. CLIENT’s criteria and requirements for the Project;
 - ii. Right-of-entry and access for TCO to enter upon the Project site whether upon Public or private property;
 - iii. All information available to or known by CLIENT which may be required by TCO in performing our services; and
 - iv. Timely examination and prompt responses to TCO’s submittals.
- c. TCO shall be entitled to rely upon the accuracy of the information and documentation provided by CLIENT and CLIENT’s other consultants.
- d. CLIENT shall coordinate the services of its own consultants with those services provided by TCO.

3. CHANGES IN SCOPE OF SERVICES

- a. If CLIENT makes changes to the scope of services shown in the Proposal attached hereto, or if unknown or unforeseen conditions are encountered in the field, which causes an increase in the cost for performance of the services hereunder, then a mutually agreed upon adjustment in fee should be made and reflected in an “Amendment,” to be executed and/or authorized by CLIENT.
- b. In the event there are modifications and/or additions to regulatory requirements or agency review processes related to the services performed under this Agreement after the date of its execution which cause an increase in the cost required of TCO for performance of the services hereunder, then a mutually agreed upon adjustment in fee shall be made and reflected in an “Amendment,” to be executed and/or authorized by CLIENT.
- c. In the event work is ordered verbally by CLIENT or its representative or agent and/or if immediate services are required to respond to construction issues on behalf of CLIENT or the Project, additions will be considered authorized and will be billed on a time basis and CLIENT will be responsible for payment.

4. GENERAL CONDITIONS

- a. **DURATION.** This Agreement shall remain in effect through the time it takes to execute the services included in the attached Proposal and any additional services authorized by CLIENT for the Project.
- b. **OWNERSHIP & REUSE OF DOCUMENTS.** All documents including drawings, estimates, specifications, field notes and data prepared by TCO for the Project are Instruments of Service for use solely

with respect to this Project, and TCO shall retain all common law, statutory and other reserved rights, including the copyright. By execution of this Agreement, and contingent upon payment in full for all services rendered, TCO grants to CLIENT a limited, nonexclusive, and revocable license to use the Instruments of Service for purposes of constructing, using, and maintaining the Project. Any reuse without specific written consent and verification or adaptation by TCO will be at CLIENT's sole risk and without liability or legal exposure to TCO. Any such consent and verification or adaptation—granted at TCO's sole discretion—shall entitle TCO to further compensation at rates to be agreed upon by CLIENT and TCO.

- c. If documents are provided to Client, Client's contractor, or Client's other consultants by TCO in electronic media, such as CAD files or other native format, CLIENT agrees that this is solely as a convenience, and may not be relied on in the same manner as the signed, sealed documents; nor are such electronic files represented to be accurate and faithful representations of the signed, sealed documents. TCO makes no representations or warranties regarding the accuracy, completeness, or readability of information contained in electronic media files.

5. CERTIFICATIONS, GUARANTEES AND WARRANTIES

- a. TCO shall not be required to execute any document that would result in certifying, guaranteeing or warranting the existence or non-existence of conditions that TCO cannot ascertain or has not been engaged to ascertain.
- b. In the event a certification is provided it is understood that any "certification" is to be an expression of professional opinion by a Registered Engineer/Registered Professional Land Surveyor in the State where the Project is located and is based on the TCO's best knowledge, information, and belief, and that it constitutes neither a guarantee nor a warranty.
- c. Unless otherwise agreed to by TCO in writing, other persons or entities, including assigns and successors of Client, shall not be considered beneficiaries and shall not be entitled to rely on any such certification.

6. CLAIMS

- a. **Risk Allocation.** TCO will be responsible only for its own work, and not for defects in the work designed or built by others, including without limitation CLIENT's contractor(s) or other consultants. TCO shall not be responsible for consequential damages to either CLIENT or any other member of the construction team, including without limitation damages for construction inefficiencies or for delays in construction.
- b. **Claims for Consequential Damages.** CLIENT and TCO mutually waive claims for consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement, including without limitation the following categories of damages: lost profits; loss of rental income; rental expenses; interest expenses; and loss of financing. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.
- c. **Force Majeure.** Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the reasonable

control of the other party, its employees or agents.

- d. **Insurance.** TCO carries and will continue to carry during the term of this Agreement, Workers' Compensation/Employer's Liability, Comprehensive General, Professional Liability, and Comprehensive Automobile Liability Insurance as required by law and any additional coverage amount(s) that TCO, in its sole discretion, deems appropriate.
7. **ASSIGNMENT.** CLIENT may not delegate, assign, sublet or transfer its duties or interest in this Agreement without the written consent of TCO. TCO may delegate, assign, sublet or transfer its duties hereunder without the written consent of CLIENT, but TCO shall be made responsible for the completion of its duties. TCO may not delegate, assign or transfer its interest in this Agreement without the written consent of CLIENT.
 8. **TERMINATION.** This Agreement may be terminated by either party on receipt of written notice or by mutual agreement. If this Agreement is terminated by either party, TCO shall be paid in full for all services performed through the termination date, and all reimbursable expenses, and the CLIENT shall then be provided with a statement of all services provided and expenses incurred prior to termination.
 9. **INDEMNIFICATION:** TCO shall save, indemnify, and hold harmless CLIENT and its directors, officers, shareholders, and employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands, actual damages, fines, and attorneys' fees, in an amount not to exceed the limitation of liability amount set forth in Section 10 of this Agreement, which result from, arise out of, or are in any way connected with breach of any obligation of TCO under this Agreement; or damages or injuries to persons or property solely caused by the negligent acts, errors or omissions of TCO or any of its agents, contractors, subcontractors, or employees in performance of the services. CLIENT shall save, defend, indemnify, and hold harmless TCO and its directors, officers, shareholders, employees, contractors, and subcontractors from and against any and all suits, actions, legal or administrative proceedings, claims, demands, actual damages, fines, punitive damages, losses, costs, liabilities, interest, and attorneys' fees which results from, arise out of, or are in any way connected with breach of any obligation of CLIENT under this Agreement, or intentional or negligent acts, errors or omissions of CLIENT, its employees, agents, contractors, and subcontractors.

10. LIMITATION OF LIABILITY

STANDARD LIMITATION OF LIABILITY

IN RECOGNITION OF THE RELATIVE RISKS, REWARDS AND BENEFITS OF THE PROJECT TO BOTH CLIENT AND TCO, THE RISKS HAVE BEEN ALLOCATED SUCH THAT CLIENT AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, TCO'S TOTAL LIABILITY TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, DAMAGES OR CLAIM EXPENSES ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OR CAUSES SHALL NOT EXCEED THE AMOUNT OF COMPENSATION RECEIVED BY TCO FOR SERVICES PERFORMED UNDER THIS AGREEMENT. SUCH CAUSES INCLUDE, BUT ARE NOT

LIMITED TO, TCO'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY OR ANY OTHER THEORY OF LEGAL LIABILITY. THIS LIMITATION OF LIABILITY SHALL APPLY TO TCO AND ITS OFFICERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONSULTANTS

11. HAZARDOUS SUBSTANCES, WASTE AND CONSTITUENTS: CLIENT agrees to promptly notify TCO of any Hazardous Substances, Waste, Constituents, and any special risk to human health, the environment or equipment on the Project site of which CLIENT is or becomes aware. By virtue of entering into this Agreement or of providing services hereunder, TCO does not assume control of or responsibility for reporting to any federal, state, or local public agencies any conditions at the site that may present a potential danger to health, safety, or the environment. CLIENT agrees to notify the appropriate federal, state, or local public agencies as required by law, or otherwise to disclose, in a timely manner, any information that may be necessary to prevent any damage to health, safety, or the environment. In connection with Hazardous Substances, Wastes, and Constituents, CLIENT agrees, to the maximum extent permitted by law, to defend, hold harmless and indemnify TCO from and against any and all claims and liabilities resulting from the CLIENT's violation of any federal, state or local statutes, regulations or ordinances relating to the disposal of Hazardous Substances, Wastes, or Constituents introduced at the site by CLIENT or third persons both before and after the completion of services to be provided under this Agreement.

12. UNDERGROUND CONDITIONS: TCO is not responsible for determination or location of underground conditions not visible or obvious by inspection of the premises, including, but not limited to, soils, geological conditions, physical devices and facilities, pipelines or buried cables unless specifically included in writing in this Agreement, and shall not be responsible for any liability that may arise out of the making or failure to make such determination or location of any subsurface condition

13. FEES AND PAYMENT

- a. Invoices will be submitted in our standard format on a monthly basis or at the completion of work.
- b. CLIENT will pay TCO in accordance with the current TCO Proposal and this Agreement and are due on receipt. If CLIENT is any entity other than the owner (e.g. Architect or other Consultant), then payment is due within 5 business days of CLIENT's receipt of funds from the owner, or the entity responsible for payment to CLIENT. Notwithstanding the foregoing, TCO reserves the right, in its sole discretion, to suspend or terminate this Agreement if invoices have not been paid within 60 days, without liability whatsoever to CLIENT and without waiving any claim or right against CLIENT.
- c. CLIENT will pay an additional charge of one and one-half percent per month (18% annually) per month not to exceed the maximum rate allowed by law for any payment received by TCO more than thirty (30) calendar days from the date of the invoice. If for any reason TCO is forced to turn CLIENT's account over for collection, to an attorney or collection agency, or if collected through legal

proceedings, then CLIENT will be obligated to pay any and all costs of collection, including agency fees, attorney fees, and court costs.

- d. Preparation of customized invoice formats will be charged on a time-and-materials basis in accordance with TCO's current fees.
- e. CLIENT will reimburse TCO for expenses incurred by TCO for the Project, in addition to TCO's fees, as set forth in the TCO Proposal including, but not limited to all sales, use, excise, value-added, gross receipts, or similar taxes.

14. DISPUTE RESOLUTION

- a. **Negotiation.** The parties agree to negotiate any claim(s) or dispute(s) arising out of or related to this Agreement between them in good faith prior to exercising any other provision of this Agreement.
- b. **Mediation.** If a claim or dispute between the parties cannot be settled within 30 days by good faith negotiations the parties agree to submit it to mediation in accordance with the Construction Rules of the American Arbitration Association.
- c. **Arbitration.** If mediation is unsuccessful, the parties agree that all claims, disputes and other matters in question between the parties shall be decided by arbitration. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The locale for any arbitration arising out of the services provided by TCO under this Agreement shall be in Fort Worth, Tarrant County, Texas.
- d. **Joinder.** TCO will not be required to participate in any mediation or arbitration proceeding with any parties other than CLIENT, without TCO's express written consent.
- e. **Statute of Limitations.** Any applicable statute of limitations shall commence to run and any cause of action shall be deemed to have accrued on the date the drawings are sealed, but in any event not later than the date of substantial completion of the Project on which TCO's services are provided.

15. GOVERNING LAWS

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas without giving effect to principles of conflicts of laws.