



**CONTRACT AMENDMENT #1
LEGACY PARK
December 21, 2012**

Article 1 PROJECT REBIDDING:

Document Update and Re-Bidding:

- 1.01 Update the Legacy Park Construction Documents to reflect comments by the City of Norman (CON), changes required by building codes, bid documents, all addendums, and compliance with the current adopted Accessibility Standards.
- 1.02 Prepare revised bid documents for reissue to prospective bidders, respond to questions, evaluate proposed substitutions, and provide support for the issuance of any addenda.
- 1.03 Participate in bid opening, contractor selection, & negotiation.

Article 2 Construction Observation – Expanded Services

- 2.05 Participate in construction observation meetings twice monthly on site (up to 30 meetings) and prepare field reports for issuance to the CON with a web link to digital photos of observations.
- 2.06 Conduct Expanded On-Site Observations as required and be available to the Contractor, to verify general conformance with the plans and specifications. Prepare additional field reports following each observation with supporting digital photographs in addition to the Basic Services noted above. This Expanded on-site presence is estimated to encompass an additional ten (10) to twelve (12) hours per week for the duration of the contracted construction term which is estimated at 58 weeks. All correspondence shall be copied for distribution to the Owner and all consultants.
- 2.07 Participate in all required preconstruction conferences for the project.
- 2.08 Prepare site observations of issues and transmit specific digital images, photographs, and documents for distribution appropriate members of the Design Team and Owner for response and action. The McKinney



Partnership (TMP) shall serve as the field liaison for the Design Team to address issues promptly as they develop and solicit action and response from the Design Team through HFSD.

- 2.09 Normal site observations required by each consultant and their response to issues specific to their work, when required, shall be undertaken by each consultant.
- 2.10 Communicate the Owner, as required, the project status and requests for information or action required.
- 2.11 TMP shall maintain general project logs of site activities and observations in order to document the results of the Expanded On-Site Services for HFSD and the Owner.

Note: These services are in addition to the services identified in Article 3.6 Construction Phase Services and Article 4.3.3. of the original AIA Contract B101-2007 between CON & HFSD.

Article 3 CONSTRUCTION TESTING:

- 3.01 Provide Construction Testing Services for the project based upon the attached proposal from PSI Engineering, Consulting & Testing (PSI) (See Exhibit "B"). Testing payments will be based upon the CON's policy of only paying for passing tests. Non-conforming, failed, or rejected tests shall be paid by the General Contractor. Any additional testing required, but not listed in the proposal by PSI, shall be billed as Additional Services, separate from the fees reflected in this proposal. HFSD shall not be responsible for accuracy of services provided by PSI.

Article 4 LANDSCAPE ARCHITECTURAL FEES:

- 4.01 Additional Fees for Project Re-Bidding, including Re-printing of documents shall be \$ 30,073.49
- 4.02 Additional Fees for Expanded Services Construction Observation shall be provided on an hourly basis, not to exceed \$ 93,875.00.
- 4.03 Additional Fees for Construction Testing Services shall be an estimated amount of \$ 40,120.50

Refer to Exhibit "A" for hourly rate schedule.



Article 5 LANDSCAPE ARCHITECTURAL FEE PAYMENTS:

- 5.01 Fees for architectural services shall be billed monthly in accordance with HFSD's Master Agreement along with all reimbursable expenses and shall be due and payable upon payment to HFSD by the Owner.
- 5.02 Accounts past due shall be charged an interest rate of 1% per month on the unpaid balance.
- 5.03 Should the Project be canceled prior to completion, only the fees for services performed and reimbursable expenses accrued through the time of Architect's receipt of written notice to cease work shall be due and payable.

Article 6 ADDITIONAL SERVICES:

- 6.01 Changes or additions to the design at the Owner's request after documents have been previously approved by the Owner.
- 6.02 Changes in scope of work other than what is outlined herein.
- 6.03 Preparation of Change Orders initiated by the Owner.
- 6.04 Construction Observation services required beyond the term of the construction as defined in the Contract for Construction, through no fault of The Design Team **Note:** Associated fees for this work shall be incorporated into the Owner-Contractor Agreement for reimbursement to the Owner as part of Liquidated Damages
- 6.05 Additional Services (approved in advance by the Owner) shall be billed hourly as listed in Exhibit "A" and shall be in addition to fees outlined in Article 4.

Article 7 REIMBURSABLE EXPENSES:

Actual costs of reimbursable expenses will be billed at one point one (1.1) times the cost in addition to the Base Fees listed in Article 4.

Reimbursable expenses shall be capped at \$3,000. Expenses shall be invoiced with the progress billings and may include but are not necessarily limited to the following:



7.01 Cost of reproduction including prints, plots, photocopies, mounting of drawings, and all other documents. All documents shall be coordinated by HFSD.

7.02 Mileage at current IRS rates.

Article 8 SCHEDULE:

Upon receipt of this executed Contract Amendment #1, we are prepared to proceed immediately. This estimated schedule does not include delays or approval time required by the Owner.

8.01 Construction Per Contract

Please advise should you have any questions. If this Proposal meets with your approval, please execute both copies and return one for our records.

Respectfully,



Scott Howard, ASLA
Principal

NORMAN TAX INCREMENT FINANCE AUTHORITY

Approved as to form and legality this _____ day of January, 2013.

City Attorney

Approved by the Norman Tax Increment Finance Authority this _____ day of January, 2013.

ATTEST:

Secretary

Chairman



Exhibit "A"
2012
BILLING RATES

Principal	\$	175.00
Senior Architect	\$	145.00
Principal Landscape Architect	\$	130.00
Project Landscape Architect	\$	110.00
Staff Landscape Design Associate	\$	100.00
Technical Level IX	\$	80.00
Technical Level VIII	\$	75.00
Technical Level VII	\$	70.00
Technical Level VI	\$	65.00
Technical Level IV	\$	55.00
Technical Level III	\$	50.00
Technical Level II	\$	45.00
Technical Level I	\$	40.00
Administrative V	\$	65.00
Administrative IV	\$	60.00
Administrative III	\$	55.00
Administrative II	\$	50.00
Administrative I	\$	45.00
Clerical	\$	30.00

Hourly rates may be adjusted without notice based upon annual employee reviews and salary adjustments.



December 10, 2012

Exhibit "B"

Scott Howard
Howard-Fairbairn Site Design, Inc.
3100 NW 149th Street
Oklahoma City, Oklahoma 73134

Phone: 752-8018
Fax: 752-8701
Email: showard@hfsd.org

RE: Proposal for Construction Materials Testing
Proposed Legacy Park at University Town Center
Norman, Oklahoma
PSI Proposal No. P0546-83219 (Revised)

Dear Mr.Howard:

Professional Service Industries, Inc., PSI, is pleased to submit the following revised proposal for providing construction materials testing and observation services for the referenced project.

This proposal includes a summary of PSI's understanding of the project needs, an outline of the proposed scope of work, and unit rates applicable for the performance of these activities. PSI has also provided a total estimated cost based upon review of the construction documents and the estimate of the construction schedule. PSI's proposal has been prepared utilizing the following documents:

- Project manual prepared by The McKinney Partnership P.C. dated August 2, 2012
- Civil drawings prepared by SMC Consulting Engineers, P.C dated August 2, 2012
- Structural drawings prepared by Grossman & Keith Engineering dated August 1, 2012

The total cost estimate is based on PSI's review of these referenced documents and PSI's estimate of quantities. The scope of work has been developed based on PSI's interpretation of the job specifications for independent testing and observation. Our scope of work for the project is derived from the following specification sections:

Sheet SS-1 General Site Structural Notes

Section 3300 3.11 Field Quality Control

The services proposed herein are conventional in nature and do not include any special services that may lessen the risk of conditions that can contribute to moisture, mold or other microbial contaminate amplification in buildings. You may be aware that mold is abundant throughout nature and is comprised of a wide variety of microscopic fungi. Due to its nature, the potential for mold infestations cannot be completely eliminated. However, PSI offers a wide array of professional Moisture, Waterproofing, Roofing and indoor Air Quality/Mold Consulting services that can help minimize the likelihood of future

occurrences. PSI is interested in discussing these service options with you to suit your specific needs and project objectives. If requested, PSI will submit a proposal for these additional services under a separate cover for your review and authorization.

Construction Hive™ is being employed as the primary report distribution platform by PSI to provide a better experience to our clients. You will have 24 hour access to your reports on this website from any internet enabled device with a web browser. Construction Hive™ has powerful report viewing, retrieval and search capabilities that allow you to find the information you are looking for faster and with greater ease.

Some of the Construction Hive™ options available include:

- Email notification of the posting of each report upon review and release by the PSI Project Manager.
- Email summary notification at the beginning or end of each day of all reports reviewed and released since the last notification.

PROJECT INFORMATION

It is understood that the proposed project will consist of outdoor amphitheater supported on drilled piers and spread footings. Earthwork operations are to cut and replace four feet of existing material with select fill. Other earthwork operations consist of less than three fill of fill material placement. New concrete street development is also indicated in the project.

This proposal is based on the testing and observation being limited to subgrade, fill, and backfill compaction; footings; rebar verification; field weld and bolt observations; masonry mortar and grout; and slump/air content and compressive strength determination of concrete. Material certifications, source quality control, process control and mix designs are not included herein.

Should any of the above information or assumptions made by PSI be inconsistent with the planned construction, PSI request that you contact us immediately to allow us to make any necessary modifications to this proposal.

TOTAL ESTIMATED COST FOR CONSTRUCTION TESTING

The total estimated costs are computed from PSI's unit costs and quantities derived from review of the project plans and specifications for the base bid. The total estimated price does not include retests, overtime charges, or delays in work due to others. These items will be charged additionally in accordance with PSI's outlined unit rates. The services on this project will be performed pursuant to the PSI General Conditions, a copy of which is attached to this proposal. Please note that testing and inspection services are difficult to estimate, as we are dependent on the pace and sequencing of the contractors.

A listing of anticipated services, associated unit rates, and total estimated costs for construction testing and observation services for the project are provided below.



Project Setup

Estimated 2 hours @ \$100.00 per hour (6203)..... \$ 200.00

Earthwork

Engineering Technician to Perform In-Place
Density Testing of Subgrade and Fill
and Pick Up Samples(1015)
Estimated 100 hours @ \$40.00 per hour..... \$ 4,000.00

Senior Engineering Technician to
Observe Proofrolling (1202)
Estimated 2 trips @ 3 hours per trip @ \$55.00 per hour..... \$ 330.00

Nuclear Density Measurement Equipment (4237)
Estimated 24 days @ \$39.00 per day \$ 936.00

Moisture Density Relationship (Standard) (6461)
Estimated 4 tests @ \$188.75 per test \$ 755.00

Atterberg Limit Determinations (6263)
Estimated 4 tests @ \$80.50 per test \$ 322.00

Material Finer than #200 Sieve (6254)
Estimated 4 tests @ \$55.25 per test \$ 221.00

Vehicle Charge (2001)
Estimated 25 trips @ \$27.75 per trip \$ 693.75

Project Management (6783)
Estimated 12 hours @ \$100.00 per hour..... \$ 1,200.00

Foundations

Senior Engineering Technician to Observe
Foundation Excavations (1111) and Reinforcing Steel Placement (1207)
Estimated 40 trips @ 2 hours/trip @ \$55.00 per hour..... \$ 4,400.00

Vehicle Charge (2001)
Estimated 20 trips @ \$27.75 per trip \$ 555.50

Project Management (6783)
Estimated 5 hours @ \$100.00 per hour..... \$ 500.00

Drilled Piers

Senior Engineer Technician To Observe Pier Drilling
Operations and Cast Concrete Cylinders (1183)(1683)
Estimated 40 hours @ \$55.00 per hour..... \$ 2,200.00



Vehicle Charge (2001)
Estimated 5 trips @ \$27.75 per trip\$ 138.75

Project Management (6783)
Estimated 2 hours @ \$100.00 per hour\$ 200.00

Concrete

Engineering Technician to Perform Slump,
Temperature, and Air Content Determinations,
and Cast Concrete Cylinders (1009)
Estimated 140 hours @ \$40.00 per hour\$ 5,600.00

Compressive Strength Test of Concrete Cylinders (5498)
Estimated 240 tests @ \$20.25 per test\$ 4,860.00

Cylinder Pickup (2064)
Estimated 20 @ \$86.00 each\$ 1,720.00

Vehicle Charge (2001)
Estimated 60 trips @ \$27.75 per trip\$ 1,665.00

Project Management (6783)
Estimated 20 hours @ \$100.00 per hour\$ 2,000.00

Structural Steel

Certified Welding Inspector to Observe Field
Welded and Bolted Connections (1051)
Estimated 24 hours @ \$70.00 per hour\$ 1,680.00

Vehicle Charge (2001)
Estimated 3 trips @ \$27.75 per trip\$ 83.25

Project Management (6783)
Estimated 1 hour @ \$100.00 per hour\$ 100.00

Masonry

Senior Engineering Technician to Cast Grout and/or Mortar Samples
(and visual verification of rebar placement) (1012)
Estimated 60 hours @ \$55.00 per hour\$ 3,300.00

Compressive Strength of Grout Prisms (5957)
Estimated 24 tests @ \$29.50 per test\$ 708.00

Compressive Strength of Mortar Cubes (5903)
Estimated 18 tests @ \$29.50 per test\$ 531.00

Compressive Strength of Hollow Masonry Units (5924)
Estimated 3 tests @ \$68.50 per test\$ 205.50



Vehicle Charge (2001)

Estimated 15 trips @ \$27.75 per trip\$ 416.25

Project Management (6783)

Estimated 6 hours @ \$100.00 per hour\$ 600.00

Total Estimated Cost

\$ 40,120.50

Fee Schedule Notes:

The following applies to all work PSI performs unless otherwise addressed in the proposal:

1. All services and fees are provided in accordance with the attached PSI General Conditions.
2. Unit prices/rates are in effect for 12 months from the date of this proposal and are subject to change without notice thereafter.
3. Overtime rates are applicable for services performed in excess of 8 hours per day Monday through Friday, before 8:00 AM or after 5:00 PM, and for all hours worked on Saturdays, Sundays and holidays. The overtime rate will be 1.5 times the applicable rate. Surcharges for laboratory services during overtime hours, or for expedited testing, may apply (these charges will be 1.5 time the applicable unit rate).
4. All rates are billed on a portal to portal basis.
5. Transportation and per diem will be charged at the applicable rate.
6. Rates involving mileage (including transportation, mobilization, vehicle and trip charges) are subject to change based upon increases in the national average gasoline price. A fuel surcharge may be applied to invoices to offset the increase in fuel prices for regular gasoline. Charges shall be made no more often than monthly.
7. A minimum charge of 3 hours applies to field testing and observation services. A minimum charge of 4 hours applies to welding and structural steel inspection.
8. Scheduling or cancellation of field testing and observation services is required no less than the working day prior to the date the services are to be performed. Services cancelled without advance and/or inadequate notice will be assessed a minimum 3 hour charge.
9. For all PSI services, a minimum of 0.3 hours of project management/engineering review charge will be billed for all reports issued for the scheduling/supervision of personnel and the evaluation/review of data and reports. Drilled pier reports will be billed a minimum 0.5 hours per report.
10. The minimum billing increment for time is a half hour.
11. A project set-up charge of a minimum of two hours applies to all projects.
12. ACI 301-10 Section 1.6.2.2d, states that the contractor is responsible for "[providing] space and source of electrical power on the project site for facilities to be used for initial curing of concrete test specimens as required by ASTM C31/C31M, for the sole use of the Owner's quality assurance testing agency." PSI understands the term "space" to mean "an environmentally controlled and secure space" for initial curing in the field, and the contractor is required to provide electricity to and security of the space. Accordingly, this proposal does not include provisions or the associated fee for PSI to provide this service. The initial curing box can be provided by PSI at the project site for additional fees which shall include the daily rental cost and associated mobilization cost of the curing box. In the event the curing box is stolen or damaged, as the site security is the responsibility of the contractor, PSI shall invoice our client the cost the same at cost plus 15%.
13. Computer, fax, copies, etc. will be charged at a minimum rate of three percent of the total project fee.
14. Services and fees not listed on the schedule may be quoted on request.

Overtime will be billed at 1.5 times the aforementioned rates for all hours worked outside of 8:00 a.m. to 5:00 p.m., over eight (8) hours per day, and all hours worked on Saturdays, Sundays, and holidays. Personnel will be charged portal to portal on a whole hourly basis with a three (3) hour minimum charge per trip. A four (4) hour minimum applies to structural steel inspection per trip. As stated previously, additional charges for overtime, retests, and/or work delays will be added to the total estimated cost.

PSI proposes to provide experienced technical personnel to perform the necessary testing and inspection services as requested by the client. It is also proposed to accomplish the work on a unit price basis in accordance with the enclosed fee schedule and the work be performed pursuant to the PSI General Conditions. Copies of the PSI General Conditions and Fees are enclosed herewith and incorporated into this proposal. PSI's fees will be determined by the actual amount of services provided for this project.

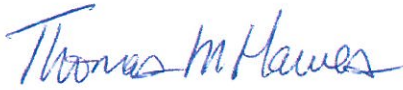


AUTHORIZATION

PSI will proceed with the work after receipt of a signed copy of this proposal intact or after receipt of a purchase order which references PSI's proposal by number and date. PSI cannot issue copies of reports until receipt of formal authorization. When returning the proposal and General Conditions, please complete the attached Project Data Sheet so PSI may best serve your project.

PSI looks forward to providing services during the construction for the Legacy Park at University town Center in Norman, Oklahoma. Should you have any questions concerning this proposal or if PSI can be of further service, please contact the undersigned at (405) 632-8800.

Respectfully submitted,
PROFESSIONAL SERVICE INDUSTRIES, INC.
Certificate of Authorization No. 1111 Expires 06/30/13



Thomas Hawes
Project Manager
Construction Services



James M. Smith, P.E.
District Manager

TH/JMS/tr

Attachments: Project Data Sheet
General Conditions

AUTHORIZED BY:
AGREED TO THIS _____ DAY OF _____, 2012
Signature: _____
Printed Name: _____
Title: _____
Firm: _____



PROJECT DATA SHEET

CONSTRUCTION MATERIALS TESTING AND INSPECTION SERVICES

1. Project Name: _____
2. Project Location: _____
3. Purchase Order No.: _____
4. Project Manager: _____ Telephone _____ Fax _____
E-mail Address: _____
5. Distribution of Reports:
Name: _____
E-mail address: _____
Name: _____
E-mail address: _____
Name: _____
E-mail address: _____
Name: _____
E-mail address: _____
Name: _____
E-mail address: _____
Name: _____
E-mail address: _____
6. Invoice To:
Company Name: _____
Address: _____
Telephone: _____ Fax: _____
7. Site Contact: _____ Telephone No.: _____ Fax No.: _____
8. Other Pertinent Information: _____



GENERAL CONDITIONS

1. **PARTIES AND SCOPE OF WORK:** Professional Service Industries Inc. ("PSI") shall include said company or its particular division, subsidiary or affiliate performing the work. "Work" means the specific service to be performed by PSI as set forth in PSI's proposal. Client's acceptance thereof and these General Conditions. Additional work ordered by Client shall also be subject to these General Conditions. "Client" refers to the person or business entity ordering the work to be done by PSI. If Client is ordering the work on behalf of another, Client represents and warrants that it is the duly authorized agent of said party for the purpose of ordering and directing said work. Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by the client is adequate and sufficient for Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom Client transmits any part of PSI's work. PSI shall have no duty or obligation to any third party greater than that set forth in PSI's proposal. Client's acceptance thereof and these General Conditions. The ordering of work from PSI, or the reliance on any of PSI's work, shall constitute acceptance of the terms of PSI's proposal and these General Conditions, regardless of the terms of any subsequently issued document.
2. **TESTS AND INSPECTIONS:** Client shall cause all tests and inspections of the site, materials and work performed by PSI or others to be timely and properly performed in accordance with the plans, specifications and contract documents and PSI's recommendations. No claims for loss, damage or injury shall be brought against PSI by Client or any third party unless all tests and inspections have been so performed and unless PSI's recommendations have been followed. Client agrees to indemnify, defend and hold PSI, its officers, employees and agents harmless from any and all claims, suits, losses, costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in the event that all such tests and inspections are not so performed or PSI's recommendations are not so followed.
3. **PREVAILING WAGES:** This proposal specifically excludes compliance with any project labor agreement, labor agreement, or other union or apprenticeship requirements. In addition, unless explicitly agreed to in the body of this proposal, this proposal specifically excludes compliance with any state or federal prevailing wage law or associated requirements, including the Davis Bacon Act. Due to the professional nature of its services PSI is generally exempt from the Davis Bacon Act and other prevailing wage schemes. It is agreed that no applicable prevailing wage classification or wage rate has been provided to PSI, and that all wages and cost estimates contained herein are based solely upon standard, non-prevailing wage rates. Should it later be determined by the Owner or any applicable agency that in fact prevailing wage applies, then it is agreed that the contract value of this agreement shall be equitably adjusted to account for such changed circumstance. These exclusions shall survive the completion of the project and shall be merged into any subsequently executed document between the parties, regardless of the terms of such agreement. Client will reimburse, defend, indemnify and hold harmless PSI from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorney's fees.
4. **SCHEDULING OF WORK:** The services set forth in PSI's proposal and Client's acceptance will be accomplished by PSI personnel at the prices quoted. If PSI is required to delay commencement of the work or if, upon embarking upon its work, PSI is required to stop or interrupt the progress of its work as a result of changes in the scope of the work requested by Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of PSI, additional charges will be applicable and payable by Client.
5. **ACCESS TO SITE:** Client will arrange and provide such access to the site and work as is necessary for PSI to perform the work. PSI shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its work or the use of its equipment.
6. **CLIENT'S DUTY TO NOTIFY ENGINEER:** Client warrants that it has advised PSI of any known or suspected hazardous materials, utility lines and pollutants at any site at which PSI is to do work, and unless PSI has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save PSI harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to PSI's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof were not revealed to PSI by Client.
7. **RESPONSIBILITY:** PSI's work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. PSI shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. PSI's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. Client agrees that it shall require subrogation to be waived against PSI and for PSI to be added as an Additional Insured on all policies of insurance, including any policies required of Client's contractors or subcontractors, covering any construction or development activities to be performed on the project site. PSI has no right or duty to stop the contractor's work.
8. **SAMPLE DISPOSAL:** Test specimens will be disposed immediately upon completion of the test. All drilling samples will be disposed sixty (60) days after submission of PSI's report.
9. **PAYMENT:** The quantities and fees provided in this proposal are PSI's estimate based on information provided by Client and PSI's experience on similar projects. The actual total amount due to PSI shall be based on the actual final quantities provided by PSI at the unit rates provided herein. Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay PSI's cost of collection of all amounts due and unpaid after thirty (30) days, including court costs and reasonable attorney's fees. PSI shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, any provision wherein PSI waives any rights to a mechanics' lien, or any provision conditioning PSI's right to receive payment for its work upon payment to Client by any third party. These General Conditions are notice, where required, that PSI shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of PSI from any and all claims which Client may have, whether in tort, contract or otherwise, and whether known or unknown at the time.
10. **ALLOCATION OF RISK: CLIENT AGREES THAT PSI'S SERVICES WILL NOT SUBJECT PSI'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LIABILITY, AND THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CLIENT AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE TO DIRECT OR ASSERT ANY CLAIM, DEMAND, OR SUIT ONLY AGAINST PSI. STATEMENTS MADE IN PSI REPORTS ARE OPINIONS BASED UPON ENGINEERING JUDGMENT AND ARE NOT TO BE CONSTRUED AS REPRESENTATIONS OF FACT. SHOULD PSI OR ANY OF ITS EMPLOYEES BE FOUND TO HAVE BEEN NEGLIGENT IN THE PERFORMANCE OF ITS WORK, OR TO HAVE MADE AND BREACHED ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR CONTRACT, CLIENT, ALL PARTIES CLAIMING THROUGH CLIENT AND ALL PARTIES CLAIMING TO HAVE IN ANY WAY RELIED UPON PSI'S WORK AGREE THAT THE MAXIMUM AGGREGATE AMOUNT OF THE LIABILITY OF PSI, ITS OFFICERS, EMPLOYEES AND AGENTS SHALL BE LIMITED TO \$25,000.00 OR THE TOTAL AMOUNT OF THE FEE PAID TO PSI FOR ITS WORK PERFORMED ON THE PROJECT, WHICHEVER AMOUNT IS GREATER. IN THE EVENT CLIENT IS UNWILLING OR UNABLE TO LIMIT PSI'S LIABILITY IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THIS PARAGRAPH, CLIENT MAY, UPON WRITTEN REQUEST OF CLIENT RECEIVED WITHIN FIVE DAYS OF CLIENT'S ACCEPTANCE HEREOF, INCREASE THE LIMIT OF PSI'S LIABILITY TO \$250,000.00 OR THE AMOUNT OF 5% OF THE TOTAL FEE TO BE CHARGED FOR PSI'S SERVICES, WHICHEVER IS THE GREATER, BY AGREEING TO PAY PSI A SUM EQUIVALENT TO AN ADDITIONAL TYPE, BUT IS INCREASED CONSIDERATION FOR THE GREATER LIABILITY INVOLVED. IN ANY EVENT, ATTORNEY'S FEES EXPENDED BY PSI IN CONNECTION WITH ANY CLAIM SHALL REDUCE THE AMOUNT AVAILABLE, AND ONLY ONE SUCH AMOUNT WILL APPLY TO ANY PROJECT. NO ACTION OR CLAIM, WHETHER IN TORT, CONTRACT, OR OTHERWISE, MAY BE BROUGHT AGAINST PSI, ARISING FROM OR RELATED TO PSI'S WORK, MORE THAN TWO YEARS AFTER THE CESSATION OF PSI'S WORK HEREUNDER, REGARDLESS OF THE DATE OF DISCOVERY OF SUCH CLAIM.**
11. **INDEMNITY:** Subject to the above limitations, PSI agrees not to defend but to indemnify and hold Client harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs to the extent arising out of PSI's negligence as finally determined by a court of law. Client shall provide the same protection to the extent of its negligence. In the event that Client or Client's principal shall bring any suit, cause of action, claim or counterclaim against PSI, the Client and the party initiating such action shall pay to PSI the costs and expenses incurred by PSI to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that PSI shall prevail in such suit.
12. **TERMINATION:** This Agreement may be terminated by either party upon seven days' prior written notice. In the event of termination, PSI shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses.
13. **EMPLOYEES/WITNESS FEES:** PSI's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay PSI's legal expenses, administrative costs and fees pursuant to PSI's then current fee schedule for PSI to respond to any subpoena. For a period of one year after the completion of any work performed under this agreement, Client agrees not to solicit, recruit, or hire any PSI employee or person who has been employed by PSI within the previous twelve months. In the event Client desires to hire such an individual, Client agrees that it shall seek the written consent of PSI, and shall pay PSI an amount equal to one-half of the employee's annualized salary, without PSI waiving other remedies it may have.
14. **HAZARDOUS MATERIALS:** Nothing contained within this agreement shall be construed or interpreted as requiring PSI to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client assumes full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.
15. **CHOICE OF LAW AND EXCLUSIVE VENUE:** All claims or disputes arising or relating to this agreement shall be governed by, construed, and enforced in accordance the laws of Illinois. The exclusive venue for all actions or proceedings arising in connection with this agreement shall be either the Circuit Court in DuPage County, Illinois, or the Federal Court for the Northern District of Illinois.
16. **PROVISIONS SEVERABLE:** The parties have entered into this agreement in good faith, and it is the specific intent of the parties that the terms of these General Conditions be enforced as written. In the event any of the provisions of these General Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.
17. **ENTIRE AGREEMENT:** This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.