

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Resolution No. 2024-**70**

Introduced By: Mayor Matthew Castelli

**A RESOLUTION  
AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH  
TRC ENVIRONMENTAL CORPORATION FOR  
DEMOLITION ASSISTANCE SERVICES**

WHEREAS, the City desires to retain the services of a competent and qualified contractor to provide demolition assistance services related to the remediation and demolition of the former Sears properties, parcel numbers 372-31-006 & 372-31-009; and

WHEREAS, TRC Environmental Corporation is competent and qualified to furnish services to the City and has provided a responsive and responsible proposal, and desires to provide demolition assistance services; and

WHEREAS, TRC understands that the Project includes the preparation of drawings and bid specifications, providing bidding assistance to the City, and contractor oversight during the abatement and demolition activities; and

WHEREAS, the City of Middleburg Heights intends to utilize public funding sources to conduct this work.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to enter into an agreement with TRC Environmental Corporation to provide demolition assistance services to the City related to the remediation and demolition of the former Sears properties, parcel numbers 372-31-006 & 372-31-009, a copy of which is attached hereto and marked "Exhibit A".

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Dave Bortolotto

President of Council

Matt Campbell

Mayor

Passed: 9/10/24

Presented to Mayor: 9/11/24

Attest: M. Meala  
Clerk of Council

Approved On: 9-11-24

	Yea	Nay
Bortolotto	X	
Ali	X	
Sage	X	
Meany	X	
McGregor	ABSENT	
Ference	X	
Zakel	X	

I, MaryAnn Meala Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res 2024-70 adopted by the Council of the City of Middleburg Hts., on 9/10/24 was posted for a period of fifteen days, beginning 9/12/24 and remained so posted for fifteen days at the two posting places as designated by Charter.

MaryAnn Meala  
Clerk

**CERTIFICATE**

I, MaryAnn Meala Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2024-70 passed on the 10<sup>th</sup> day of September 2024 by said Council.

MaryAnn Meala  
Clerk of Council



1382 W Ninth St., Suite 400  
Cleveland, OH 44113

T 216.344.3072  
TRCcompanies.com

September 4, 2024

City of Middleburg Heights  
15700 Bagley Road  
Middleburg Heights, Ohio 44130

Attention: Mr. Charles Bichara

Reference: Demolition Assistance Services  
Former Sears Property - Parcels 372-31-006 & 372-31-009  
6950 West 130<sup>th</sup> Street  
Middleburg Heights, Ohio 44310

Dear Mr. Bichara:

At the request of the City of Middleburg Heights (the City), TRC is pleased to provide this proposal and cost estimate to provide Demolition Assistance Services at the Former Sears Property located in Middleburg Heights, Ohio (Project). TRC understands that the Project includes the preparation of drawings and bid specifications, providing bidding assistance to the City, and working with the City's Owner Representative. The City of Middleburg Heights intends to utilize public funding sources to conduct this work.

In general, TRC anticipates the following tasks shall constitute the scope of services.

## **PROPOSED SCOPE OF SERVICES**

### **Task 1: Updating Existing Health and Safety Plan, Document Review and Review of Existing Drawings**

Prior to any site activities, TRC's project manager will update our existing Health and Safety plan to be used during any site visits and future oversight work. The Health and Safety plan will be prepared in accordance with TRC standards and will address special considerations such as confined spaces, unstable buildings, darkened or wet areas, ladder work, and electrical hazards in addition to the standard project considerations associated with the abatement of asbestos and regulated materials and demolition activities.

Additionally, TRC personnel will review any existing facility drawings, design plans or reports that are provided by various city departments. The purpose of this effort is to gain knowledge regarding the layout and configuration of the facility, including the location of the boilers, stairs, and other building systems and to provide a basis of understanding of the building layout. Since it is thought that there are many available drawings, one purpose of this review is to gather drawings deemed significant to the Project that can be used in later phases such as the preparation of bid documents. An inventory of the drawings (e.g., structural, sewer and utility drawings), and property boundary surveys will also be conducted so that when issued for bidding, contractors can refer to existing drawings needed for the preparation of their bids.

As part of this initial task, TRC will have kickoff discussions with City personnel, including your engineering and facilities staff, to discuss the City's priorities and preferences for making the Project a success.

## **Task 2: Current Conditions Assessment & Confirmation**

It is understood that portions of the properties may be substantially degraded, lack proper electrical and water service and therefore safety for workers is a consideration. This task is intended to field-verify existing information and gather additional data on existing conditions at the site.

TRC will conduct an evaluation of safety considerations that pertain specifically to the integrity of the building so that when contractors begin initial demolition tasks (asbestos abatement and regulated materials removal), they are aware of the conditions inside the buildings and can plan for their methodology (e.g., ingress/egress routes, decontamination zones). If areas are deemed unsafe (e.g., lack of electrical service, water or water damage) the contractors can plan for conducting their work safely in these areas under special conditions and prepare the appropriate corresponding costs.

In addition, this task is intended to field verify select drawings that will be used in the specifications package and identify specific items that are deemed important for bidding purposes such as the locations of utilities terminations, overhead electrical services and surface water discharge points (catch basins). A review of traffic patterns will also be conducted so that a Maintenance of Traffic (MOT) plan can be prepared for the specifications.

## **Task 3: Preparation of Qualifications-Based Request for Qualifications (RFQ)**

TRC anticipates that the City will conduct contractor selection based on a qualifications model. The purpose of this effort is to pre-screen contractors so that during actual bidding of the project, the City will review bids by qualified contractors that meet the City's standards. As part of this effort, TRC will prepare a request for qualifications (RFQ) document that can be used by the City to solicit potential contractors. The RFQ will stipulate items such as:

- Contractor's company history (years of business) and ownership structure;
- Insurance requirements;
- Project understanding;
- Experience with similar projects;
- Experience working with in Ohio Department of Development (DOD) Brownfields projects;
- Safety metrics;
- Notice of past violations;
- Staffing and schedule capacity to complete work; and
- References.

As part of this work, TRC will discuss special requirements with the City so that the solicitation will be comprehensive and congruent with similar solicitations that the City has publicized. Actual publication and advertisement will be performed by the City.

#### **Task 4: Evaluation of RFQ Responses and Coordination Meetings with City of Middleburg Heights**

Upon receipt of the RFQ's from potential contractors, TRC will provide support to the City by evaluating the responses and discussing with the City. TRC anticipates at least one meeting (virtual or in person) with the City and the City's Owner Representative to discuss the bids and exchange views on the quality and appropriateness of the responses. Completing this task will result in a selection of 3-5 qualified contractors that will be listed to receive cost proposals.

#### **Task 5: Preparation of Request for Proposals (RFP) for Abatement and Demolition**

Select contractors will be sent a formal request for proposal (RFP) that will include City provided front-end documents, project specifications, and bid form(s). The following sections detail the preparation of these portions of the RFP.

##### **5.1 Project Specifications Development and Bid Form Preparation**

Demolition specifications (including asbestos and regulated materials abatement) will be prepared for the full demolition of the buildings. The specifications will be performance-based and include information on the location of utilities, buried items, space available for contractor equipment, laydown space and provisions for maintenance of traffic (MOT). Drawings will also include typical details for items such as backfilling, compaction and final site grading requirements. TRC anticipates 8-10 drawings with the associated notes and typical details, will be prepared to aid the contractors in their bidding.

Additionally, TRC will produce abatement project specifications and the associated drawings for the abatement of ACM and regulated materials. The specifications will include a general description of activities to be taken for the safe removal of identified ACM and refer to pertinent environmental regulations, estimated quantities and locations of identified ACM, and other pertinent information that will be provided on drawings of the buildings such that contractors can estimate removal parameters. The project specifications are not an abatement design but rather a performance-based summary of removal requirements.

In general, the specification will include the following items.

- The types, location, quantity, and condition of identified ACM and other regulated wastes.
- Floor plans depicting the general location and quantity of identified asbestos containing materials. The drawings will be based on electronic drawings provided by the City.
- General notes, references to appropriate regulations and typical representations.
- Photographs of areas of homogeneous ACM and a material description of ACM thought to be disturbed.
- Data tables indicating sample numbers, quantity estimations, and percentage of asbestos containing materials.
- The locations, estimated quantities, and other pertinent information will be provided on scale drawings so that removal parameters and locations can be estimated by contractors.

The project specifications will also include a bid form designed to stipulate unit rates for all anticipated forms of ACM and regulated materials. Demolition costs will be a line item based on

the specifications. The purpose of this bid form is to provide a consistent basis of comparison of bids and for additions or deductions that might be encountered during the abatement work as part of unforeseen conditions.

## **5.2 Utility Relocation Evaluation and Permitting**

In support of Task 5.1, TRC will provide an evaluation of available site drawings and field observations for the presence and location of all utility services lines potentially affected by abatement and demolition activities. TRC will advise on the disconnection, decommissioning and/or relocation of the service lines to allow for safe execution of the Project. This task will not be an engineering re-routing or design; however, it will be an identification of affected utilities and consulting with city staff (engineering department) on termination requirements of existing utilities.

### **Task 6: Coordination Meetings, Contractor Site Visit, General Bidding Assistance**

TRC anticipates attending up to two meetings (virtual or on-site) to discuss the requirements for the work with team members involved in the Project including the City's Owners Representative. Based on the results of the discussions, TRC will adjust or finalize the demolition/abatement specifications.

TRC will host a pre-bid meeting/site walk-through with potential contractors to answer any questions regarding the specifications and provide an evaluation of received bids. TRC will respond to requests for information (RFIs) and issue any clarifications and addenda to the specifications on behalf of the city.

### **Task 7: Bid Evaluations and Recommendations**

Once all bids are received, TRC will make an independent evaluation of the bids and meet with the City to discuss the responses. TRC will prepare a bid comparison sheet to help the City compare costs, experience, and insurance requirements and other parameters the City deems essential to the bid evaluations. TRC will attend a meeting with the City to conduct this evaluation and, if needed, aid in negotiations and obtaining a best and final offer (BFO) from the top contractor candidates.

## **Budget and Assumptions**

### **Budget**

The following table presents our cost estimate for Tasks 1-7.

Task	Description	Approximate Cost
1	Preparation of Health and Safety Plan, Document Review and Drawing Preparations	\$ 11,500
2	Conditions Assessment, Confirmatory Survey and Inventory	\$ 15,500
3	Preparation of Qualifications-Based Request for Qualifications (RFQ)	\$ 15,000
4	Evaluation of RFQ Responses and Coordination Meetings with City of Middleburg Heights,	\$ 8,800
5	Preparation of Request for Proposals (RFP) for Abatement and Demolition 5.1 Project Specifications Development and Bid Form Preparation 5.2 Utility Relocation Evaluation and Permitting	\$ 54,000
6	Coordination Meetings, Contractor Site Visit, General Bidding Assistance	\$ 19,000
7	Bid Evaluations and Recommendations	\$ 14,000
		<b>\$137,800</b>

**Assumptions:**

In accordance with this proposal and scope of services, the following assumptions shall apply to all stages of work:

1. The City is to provide contractual bidding documents (front end documents) to accompany the specifications and bid package.
2. The City will arrange and provide access for TRC staff and subcontractors to the Project.
3. Final specifications produced by TRC will be performance-based.
4. The specifications include the preparation of a maximum of 10 drawings based on electronic floorplans provided by the City. TRC engineers will not provide stamps to the drawings.
5. This proposal assumes the City of Middleburg Heights, will hire all Contractors (abatement and demolition) directly for the work to be described in the Project specifications.
6. This proposal includes a limited number of sampling as described above, to be conducted in support of this work.
7. This proposal is based on a review of currently available data, information, reports, and work plans. Proposed activities are based on TRC's experience with navigating similar sites (e.g., similar contaminants, hydrogeologic settings, site end use) and professional judgement and experience. Actual site conditions and findings are likely to vary from the expectations and assumptions in this proposal, resulting in cost variations. Due to this expected variation, the proposal includes budget contingencies for the confirmation sampling activities; however, unexpected conditions and cost variances could be encountered beyond TRC's assumptions. As needed, TRC will communicate variances to the City of Middleburg Heights, and will provide change orders for the City of Middleburg Heights' acceptance prior to execution of the work. Additional services will also be performed in accordance with the attached Rate Schedule. Additional soil, groundwater or other remedies are not included.
8. The proposal does not include costs for completing Ohio's Voluntary Action Program (VAP) or Ohio EPA Technical assistance.

9. This proposal includes one Client or owners representative review of each DRAFT deliverable discussed in this proposal. Upon receipt of your comments, the FINAL deliverable will be issued upon your authorization. Additional review cycles will be billed on a time-and materials basis.
10. This proposal assumes that at the initiation of field work, the City will have secured unencumbered access to the site (including adjacent property not owned or controlled by the City).
11. Should the schedule be changed, or project be put on "hold" by the Client, all costs incurred by TRC up to the notification of change of schedule or "hold" status will be billed to the Client. Additional fees that TRC may incur once the project has resumed will also be billed to the Client in addition to the quoted fee.
12. No delays beyond TRC's control will be encountered in performing the scope of services such as unforeseen travel circumstances, inclement weather, pandemic and conditions deemed unsafe by TRC personnel, etc.
13. TRC reserves the right to limit access by its personnel to the building(s) if areas are deemed unsecure, unstable or otherwise dangerous to enter safely. In this event results will be determined at the discretion of the inspector.
14. Additional delays and costs may be applied due to COVID-19 restrictions.

#### **Basis for Payment**

TRC will submit invoices monthly in accordance with estimated billing rates (rates attached for reference) that are in effect when the work is performed. Billing rates are subject to annual rate escalation.

#### **Terms of Contract**

TRC proposes to perform the services under the attached TRC Proposal Terms and Conditions that have been used previously with the City of Middleburg Heights. It is understood that a separate authorization for this portion of the work may be required from the City and Council. It is also understood that this proposal (and all attachments) shall be entered into the record as part of the authorization.

TRC appreciates the opportunity to submit this proposal and looks forward to assisting the City of Middleburg Heights with this important Project. If you have any questions or would like to discuss this proposal, please do not hesitate to call me at 216-385-5857.

#### **TRC Environmental Corporation**



Seda Ergun  
Principal Consultant

Attachment: TRC Rate Sheet  
TRC Terms and Conditions



Mr. Charles Bichara  
TRC Proposal No. 582043.9990  
September 4, 2024  
Page 7

***Please indicate your acceptance of this proposal by signing and returning the authorization below or another acceptable notice to proceed.***

**ACCEPTANCE OF PROPOSAL**

**CLIENT: CITY OF MIDDLEBURG HEIGHTS,**

\_\_\_\_\_  
*Signature and Date*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Title*



## TRC Environmental 2024 Rate Schedule – Middleburg Heights

CODE	TRC LABOR EV P-CODES	2024 HOURLY LABOR RATE
	<b>Principal/Technical Director</b>	
EV28	Level IV	\$336
EV27	Level III	\$307
EV26	Level II	\$265
EV25	Level I	\$264
	<b>Program Manager/Senior Technical Manager</b>	
EV24	Level IV	\$226
EV23	Level III	\$218
EV22	Level II	\$216
EV21	Level I	\$190
	<b>Project/Technical Manager</b>	
EV20	Level IV	\$185
EV19	Level III	\$183
EV18	Level II	\$160
EV17	Level I	\$158
	<b>Senior Scientist/Engineer/Specialist</b>	
EV16	Level IV	\$150
EV15	Level III	\$144
EV14	Level II	\$138
EV13	Level I	\$128
	<b>Project Scientist/Engineer/Specialist</b>	
EV12	Level IV	\$120
EV11	Level III	\$115
EV10	Level II	\$109
EV09	Level I	\$104
	<b>Scientist/Engineer/Specialist, Technicians, and Project Support</b>	
EV08	Level VIII	\$96
EV07	Level VII	\$93
EV06	Level VI	\$90
EV05	Level V	\$87
EV04	Level IV	\$81
EV03	Level III	\$67
EV02	Level II	\$60
EV01	Level I	\$57

- (1) A 15% Mark-up will be added to non-labor costs and expenses/ODCs. The Markup does not apply to equipment & laboratory rates below.
- (2) A 6% Communication/Digital Fee will be applied to labor charges in lieu of separate reimbursement for digital productivity solutions/applications, photocopying, report production, software usage, and postage costs. Digital solutions/applications include mobile and desktop applications for data collection, hosting, visualization, and automated workflows, excluding custom development as required on a per project basis.
- (3) Overtime rates will apply to non-exempt (hourly) staff in conformance with applicable law.
- (4) TRC rates are subject to an annual calendar year escalation
- (5) Invoicing will apply TRC billing rates in conformance with the rate schedule in effect at the time of the services.
- (6) A 2% fee will be applied to the invoice amount to cover Professional Liability and related insurance costs.
- (7) For Litigation or Litigation Support Services, please request a copy of our Standard Rates for Litigation Services



## TRC PROPOSAL TERMS AND CONDITIONS

These Terms and Conditions are incorporated into the proposal to which these Terms and Conditions are attached (the “**Proposal**”). The term “**TRC**” herein shall mean the entity submitting the proposal. The term “**Client**” herein shall mean the person or entity for whom the Work will be performed.

### ARTICLE 1. WORK, AGREEMENT DOCUMENTS, AND PROJECT INFORMATION

- 1.1 Work, Deliverables, Materials. TRC will perform the consulting, engineering, and/or other professional services (the “**Work**”), provide the work product, such as drawings, plans, specifications, reports, or other information (“**Deliverables**”), and/or procure the materials and/or equipment (“**Materials**”), as set forth in detail in the Proposal.
- 1.2 Agreement Documents. These Terms and Conditions, together with the Proposal, form the Agreement pursuant to which TRC will perform. If Client issues a purchase order or similar document authorizing the Work (“**Client Authorization**”), any pre-printed terms included in any Client Authorization shall be of no effect and are expressly excluded from this Agreement.
- 1.3 Interpretation. In the event of any conflict or inconsistency between or among any of the Agreement Documents, these Terms and Conditions shall take precedence, followed by the Proposal, unless expressly stated otherwise herein or in the Proposal. In the event of any conflict or inconsistency between or among the terms or conditions established in a Change Order or amendment and the Agreement, the terms of such Change Order or amendment will take precedence over those of the Agreement. No other terms or conditions shall be applicable to the Work.
- 1.4 Defined Terms. Some capitalized terms used in the Agreement may be defined in the Proposal. Any term defined in the Proposal will have the same meaning throughout the Agreement, and any term defined in the Agreement will have the same meaning in the Proposal.

### ARTICLE 2. COMPENSATION AND INVOICING

- 2.1 Compensation. Client shall pay the Contract Price set forth in the Proposal.
- 2.2 Invoicing. TRC will bill for its Work, and Client shall compensate TRC, as provided in the Proposal. TRC will submit monthly invoices for Work rendered and expenses incurred in the prior month.
  - (a) Time and Expense. Any Work performed on a time and expense or time and materials basis will be invoiced as follows:
    - (i) Rates shall be as set forth in the Proposal. Rates are subject to increase on an annual basis.
    - (ii) TRC will keep accurate and daily records of all labor, equipment, and materials furnished. TRC will summarize daily records on a weekly and/or monthly basis and will submit for review upon Client’s written request.
    - (iii) Reimbursable Expenses:
      - Project Expenses. Expenses reasonably incurred in connection with the Work will be invoiced at 6% of Labor (includes in-house reproduction, office materials, telecommunications, standard software, postage, computer expenses, and field expendables).
      - Insurance. A charge of 2% will be applied to all invoiced amounts for the cost of TRC’s insurance coverage.
      - Subcontractors. A fee of 15% will be added to the invoice cost of subcontracts managed by TRC
      - Client Requested Expenses. Outside services such as, but not limited to, outside reprographic services, materials, and equipment, will be invoiced at cost plus 15%.
      - Mileage. Personal automobile travel from portal to portal or between locations will be charged at current IRS mileage rates per mile.
      - Travel Expenses. Airfare, car rental, taxi, parking, tolls, and incidental expenses will be invoiced at cost plus 15%, with receipts provided for any expense over \$25.00.
      - Lodging and Meals. Lodging and meals will be charged either:
        - o at cost plus 15%, with receipts provided for any expense over \$25.00, or
        - o on a per diem basis, using the GSA per diem rates found here: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. When lodging and meals are charged on a per diem basis, a flat per diem rate will be charged and receipts will not be provided for actual lodging and meal expenses.
    - (iv) Unless otherwise stated, the Contract Price does not include any present or future federal, state, or local property, license, privilege, sales, use, excise, gross receipts or other like taxes or assessments which may be applicable to, measured by, imposed upon, or resulting from the performance of the Work.
  - (b) Lump Sum or Unit Prices. If Work is performed on a lump sum or unit price basis, TRC will invoice on the schedule provided for in the Proposal or, if no invoicing schedule is included in the Proposal, based on percentage of completion of Work or number of units completed, as applicable.
  - (c) Disputed Invoices. If Client objects to all or any portion of an invoice, it must notify TRC in writing detailing the nature of the objection within seven (7) days from the date of receipt of the invoice, and must pay any undisputed portion of the invoice as provided in Section 2.3 below. The Parties will confer immediately after Client advises of a dispute and the Parties will make every effort to immediately resolve the disputed portion of the invoice. If the Parties fail to reach agreement at the project level on a disputed invoice within thirty (30) days of the date of the invoice, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.
- 2.3 Payment Terms. Except as provided in Section 2.2(c) above, Client must pay all invoices as set forth in the remittance instructions in Section 16.12 below no later than thirty (30) days after the date of the invoice.
- 2.4 Failure to Pay. Except as provided in Section 2.2(c) above, interest will accrue on all delinquent payments at the rate of 1.5% per month, or the highest rate permissible under applicable law, whichever is less, starting on the 31<sup>st</sup> day after the date of an invoice.



Additionally, if Client does not pay TRC within forty-five (45) days of the date of an invoice, then, upon seven (7) days' written notice to Client, TRC may suspend performance of the Work and any Deliverables until it receives payment of the amount owing. Additionally, Client will reimburse TRC for all reasonable costs incurred by TRC in collecting any overdue payments and related interest, including, without limitation, reasonable attorneys' fees, other legal costs, court costs, and collection agency fees.

- 2.5 Records/Audit. TRC will keep complete and accurate records in accordance with generally accepted accounting practices with respect to all amounts invoiced by TRC under this Agreement. TRC will keep such records pertaining to each invoice for two (2) years after the date of the invoice. If an audit is commenced within such two (2) year period, Client must provide TRC with advance written notice of the audit, such audit may only be performed during normal business hours, and such audit shall not extend to TRC's overhead, markups, profit/loss information, fixed rates, unit prices, prices expressed as percentages, efficiency in performing Work, or any trade secrets.

### ARTICLE 3. TIME FOR PERFORMANCE

- 3.1 Time for Performance. TRC will use commercially reasonable efforts to perform the Work within the Contract Time stated in the Proposal to the extent consistent with the terms of this Agreement, the Standard of Care defined below, and the orderly progress of the Work.

- 3.2 Completion. TRC's Work will be considered complete at the earlier of: (i) the date when TRC's Deliverables are reasonably accepted by Client; or (ii) thirty (30) days after the date when the last of TRC's Deliverables are submitted for final acceptance if Client does not notify TRC in writing within such 30-day period that the Deliverables fail to conform to the requirements of the Agreement.

### ARTICLE 4. ADDITIONAL AND CHANGED WORK, DELAYS

- 4.1 Work Added or Changed by Client. Client shall provide TRC with an equitable adjustment in compensation and time for performance for any Work added or changed by Client. Any changes or additions to the Work shall be set forth in a written document signed by both Parties ("Change Order"). TRC has no obligation to proceed with changed or additional work until the Parties execute a Change Order.

- 4.2 Force Majeure Events. No Party will be liable or responsible to the other Party, nor be deemed to have defaulted under this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), to the extent such failure or delay is caused by a Force Majeure Event. The term "Force Majeure Event" means any event which: (a) is not within the reasonable control of the affected Party; and (b) causes the affected Party to be delayed in performance of, or unable to perform, its obligations under this Agreement. Subject to the foregoing, Force Majeure Events include, but are not limited to: drought; fire; flood; extreme weather conditions; earthquake; lightning; epidemic; war (whether declared or undeclared); acts of terrorism, or damage resulting therefrom; acts of God or the public enemy; explosion; rebellion; riot; civil disturbance; sabotage; vandalism; actions of third parties; actions of a court or other governmental entity; actions of, or failure to act by, regulatory agencies; strikes or other concerted acts of workers; accidents in shipping or transportation; and the closing or congestion (beyond reasonably foreseeable levels) in any harbor, dock, port, canal, or other adjunct of the shipping or navigation of or within any place; or pandemic, epidemic, or governmental activity in response to such pandemic or epidemic that impacts a Party's ability to perform. The Party affected by a Force Majeure Event: (i) must promptly notify the other Party by email; (ii) is relieved from fulfilling its contractual obligations during the continuance of the Force Majeure Event to the extent the inability to perform is caused by the Force Majeure Event; (iii) as soon as reasonably possible after the Force Majeure, must fulfill or resume fulfilling its obligations hereunder; (iv) must promptly notify the other Party by email of the cessation or partial cessation of the Force Majeure Event; and (v) will be entitled to equitable compensation and an equitable adjustment of the Contract Time to neutralize the effect of the Force Majeure Event. Within a reasonable time after cessation of the Force Majeure Event, any Party claiming additional time and/or compensation must provide the other Party with supporting information to substantiate its position. If the Parties fail to reach agreement at the project level on an amendment or a Change Order within thirty (30) days of the submission of supporting information, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.

- 4.3 Impacts to the Work. TRC will be entitled to equitable compensation for, and an equitable adjustment of the Contract Time, to the extent the Work is impacted by any additional or changed Work as a result of any actions or circumstances not the fault of TRC, including, but not limited to: a failure of Client to perform or cause performance of its obligations in accordance with the Agreement, including, but not limited to, failure to provide necessary access or Information (defined below); failure to provide necessary comments in connection with the development of any Deliverables (defined below); interference with or delay of any Work caused by Client, or other party for whom Client is responsible; any error, omission, or ambiguity in Information; changes in site conditions; and delays in obtaining, or the absence, suspension, termination, or failure of renewal of, any permit, license, or governmental authorization.

- 4.4 TRC Change Order Requests. Whenever TRC discovers an event or a condition has impacted its Work so as to constitute a basis for a change in compensation or schedule, TRC will notify Client by email promptly after discovery of the event or condition, advising Client of the nature of the impact and requesting a Change Order. Within a reasonable time thereafter, TRC will provide Client supporting information to substantiate TRC's position. If the Parties fail to reach agreement at the project level on a Change Order request within thirty (30) days' of TRC's submission of supporting information, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.

- 4.5 Delays by TRC. If the Work is not progressing in accordance with the project schedule due to TRC's fault, TRC will take appropriate corrective measures to recover the schedule at TRC's expense, to the extent the delays are caused by TRC's fault.

### ARTICLE 5. CLIENT'S RESPONSIBILITIES

- 5.1 Client Information. Client will furnish to TRC all existing studies, reports, surveys, inspections, Project Site evaluations, data, and other information available or that becomes available to Client and pertinent to TRC's performance of the Work ("Information"), authorize TRC to obtain additional Information as required; and furnish the services of others where necessary for the performance of the Work. TRC will be entitled to use and rely on the completeness and accuracy of all such Information.

- 5.2 Access. Where necessary for performance of the Work, Client will arrange for TRC access to any site or property.

- 5.3 **Subsurface Investigations.** If the Work involves subsurface investigation, excavation, or drilling, Client must provide TRC with assistance in locating underground structures or utilities in the vicinity of any such activities. If despite commercially appropriate practices neither Client nor TRC can confirm the location of such underground structures or utilities, Client agrees that TRC is not responsible for any costs associated with, and accepts all liability and costs associated with, the repair, replacement, or restoration of any damage caused by the performance of the Work.
- 5.4 **Communication.** Client will designate an authorized representative who will be responsible for communications and consultation with TRC and who will have the authority to make decisions necessary for TRC to perform its Work.

#### ARTICLE 6. TRC'S OBLIGATIONS AND WARRANTY

- 6.1 **Standard of Care.** TRC will perform the Work consistent with the professional skill and care ordinarily provided by the same type of professional, for a project of similar size, scope, and complexity during the time which the Work is provided, and in a similar locality, under similar circumstances ("Standard of Care"). Reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment will not excuse Client from paying for Work rendered.
- 6.2 **Warranty for Materials.** In the event TRC procures Materials pursuant to this Agreement, TRC warrants to Client that the Materials will be new and free of defects in workmanship ("Warranty").
- 6.3 **Remedies.** If TRC's Work fails to meet the Standard of Care ("Nonconforming Work"), or if any Materials fail to meet the Warranty ("Defective Materials"), and if Client provides written notice to TRC of such failure no later than one (1) year after completion of the Work ("Correction Period"), at TRC's option TRC will within a reasonable time after receipt of written notice: (a) re-perform the Non-conforming Work; (b) repair or replace the Defective Materials; or (c) refund the amount of compensation paid to TRC for such Non-conforming Work and/or Defective Materials. Client will provide TRC access to the Project Site so TRC can perform its obligations under this Section 6.3.
- 6.4 **Warranty Limitation.** THE STANDARD OF CARE IS NOT A WARRANTY OR GUARANTEE, AND TRC HAS NO SUCH OBLIGATION, EXPRESS OR IMPLIED, WITH RESPECT TO PROFESSIONAL SERVICES. NOTHING IN THIS AGREEMENT WILL BE INTERPRETED TO REQUIRE TRC TO PERFORM PROFESSIONAL SERVICES TO ANY HIGHER STANDARD OR HAVE ANY OBLIGATION IN THE PERFORMANCE OF PROFESSIONAL SERVICES IN EXCESS OF WHAT IS REQUIRED BY THE STANDARD OF CARE, AND THIS SECTION WILL CONTROL OVER ANY CONTRARY PROVISION. OTHER THAN THE EXPRESS WARRANTIES CONTAINED HEREIN, TRC DISCLAIMS ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. SUBJECT TO TRC'S LIABILITY UNDER SECTION 9.2, CLIENT'S EXCLUSIVE REMEDIES AND TRC'S ONLY OBLIGATIONS ARISING OUT OF A CLAIM FOR NONCONFORMING WORK AND/OR DEFECTIVE MATERIALS FOLLOWING SUBSTANTIAL COMPLETION OF THE WORK WILL BE THOSE STATED IN THIS ARTICLE 6.
- 6.5 **Licenses.** TRC will obtain in TRC's name the known licenses, permits, or other approvals from any governmental agency or regulatory body that are necessary for TRC to perform the Work.
- 6.6 **Resources.** TRC will obtain all tools, equipment, materials, software, and licenses that are necessary for TRC to perform the Work.
- 6.7 **Employees.** TRC will employ, discharge, pay, control, and direct its employees. TRC will employ only skilled professionals for Work requiring special qualifications.
- 6.8 **Inspections.** If the Work includes inspections during or after construction based upon TRC-prepared drawings or specifications, notwithstanding anything to the contrary herein, consistent with the Standard of Care, TRC will visit the Project Site at intervals appropriate to the state of the contractor's operations, or as specifically provided in TRC's Work, (1) to become generally familiar with and to keep Client informed about the progress and quality of the portion of the construction work completed, (2) to endeavor to guard Client against defects and deficiencies in the construction work, and (3) to determine in general if the construction work is being performed in a manner indicating that, when fully completed, will be in accordance with the applicable contract documents, but the sole responsibility for compliance with drawings and specifications will be with the entity performing the construction. TRC shall not have control of, nor be in charge of, nor shall be responsible for, the means, methods, techniques, sequences, procedures, construction, or safety precautions and programs in connection with any construction work, as these are solely the construction contractor's rights and responsibilities. Furthermore, TRC shall not be responsible for the failure of Client, or any party under contract with Client, including, but not limited to, any architect, engineer, consultant, contractor, or subcontractor, to carry out their respective responsibilities in accordance with their legal and contractual obligations.
- 6.9 **Communication.** TRC will designate an authorized representative who will be responsible for communications and consultation with Client and who will have the authority to make decisions necessary for TRC to perform its Work. TRC will advise Client at regular intervals of the status of the Work.

#### ARTICLE 7. CONFIDENTIALITY

- 7.1 **Confidentiality Agreement.** The Party receiving Confidential Information may include that Party's Representatives ("Recipient"). The term "Representatives" means a Party's affiliates and their respective employees, agents, and advisors. Recipient is not permitted to reveal Confidential Information (defined in Section 7.2 below) to any third party without written consent from an authorized representative of the Party disclosing the Confidential Information ("Discloser"). Notwithstanding the foregoing, Client acknowledges that TRC's review of Client's Confidential Information will inevitably enhance TRC's knowledge and understanding of Client's business in a way that cannot be separated from TRC's other knowledge, and Client agrees that this Agreement shall not restrict TRC in connection with the purchase, sale, or consideration of, or decisions related to, other investments.
- 7.2 **Confidential Information.** The term "Confidential Information" includes: (i) all non-public information, materials, or products developed pursuant to this Agreement; and (ii) information about a Party's or its Representatives' business affairs, employees, finances, services, intellectual property, trade secrets, and other sensitive, marketing, or proprietary information, whether disclosed orally or in written, electronic, or other form or media. Notwithstanding the foregoing, however, Confidential Information shall not include the following: (i) information which at the time of disclosure is or becomes publicly available other than as a result of a

disclosure by an act or omission of Recipient; (ii) information which is or becomes available to Recipient on a nonconfidential basis from a source (other than from Discloser) which is not prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to Discloser; (iii) information which was already known to Recipient; or (iv) information which is independently developed by Recipient.

- 7.3 **Legal Obligation to Disclose.** If Recipient is required by applicable law, regulation, or legal process to disclose any of the Confidential Information, Recipient will notify Discloser promptly so Discloser may (i) seek a protective order or other appropriate remedy, (ii) take action to assure confidential handling of such information, and/or (iii) in its sole discretion, waive compliance with the terms of this Agreement. In the event such protective order or other remedy is not obtained, or Discloser waives compliance with the terms hereof, Recipient (i) may so disclose only that portion of the Confidential Information which it is legally required to disclose and shall, upon request, reasonably assist Discloser with Discloser's efforts to obtain reliable assurance that confidential treatment will be afforded such Confidential Information, and (ii) shall not be liable for such disclosure. Notwithstanding the foregoing, Client acknowledges that one or more of TRC's affiliates is a registered investment adviser and that TRC may be subject to routine examinations, investigations, regulatory sweeps, or other regulatory inquiries by applicable regulatory and self-regulatory authorities. Client agrees that TRC may make such disclosures as may be requested by any such authority (or examiner thereof) and will not be required to comply with the process described in this paragraph; provided that if the request by such authority (or examiner thereof) is specifically targeted at Client, TRC will notify Client (to the extent not prohibited by such authority or examiner or by applicable rule, regulation, or law) as promptly as practicable following such request.
- 7.4 **Remedy.** Each Party agrees the actual or threatened disclosure or use of any Confidential Information, other than as permitted under this Agreement, will cause irreparable harm to Discloser, and Discloser will be entitled, without prejudice or limit to any other remedy, to obtain injunctive relief to prevent such unauthorized use or disclosure.
- 7.5 **Communications with Third Parties.** To the extent the Work requires TRC to communicate with any third party including, but not limited to, owners of the Project Site or other locations, former employees, current employees, or government authorities, TRC shall so inform Client. For all such communications, Client releases TRC from claims of breach of confidentiality, waiver of privilege, or otherwise associated with any such communications.

#### ARTICLE 8. INSURANCE

- 8.1 **Required Insurance Coverage.** TRC will obtain and maintain insurance of the types and amounts set forth herein. The insurance will be in effect before Work commences, and will remain in effect until completion of the Work. TRC will require any subcontractors to obtain and maintain coverages appropriate to their scope of work. TRC will have the following insurance coverage:
- (a) **Worker's Compensation Insurance and Employer's Liability Insurance** as required by the law of the state in which the Project is located, but Employer's Liability coverage will be in the amount of \$1,000,000 each accident;
  - (c) **Automobile Liability Insurance** in the amount of \$1,000,000 combined single limit per accident;
  - (d) **Commercial General Liability Insurance** in the amount of \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products-completed operations aggregate; and,
  - (e) **Professional Liability Insurance** in the amount of \$1,000,000 each claim and \$2,000,000 annual aggregate.
- 8.2 **Certificates of Insurance.** Prior to commencing Work, TRC will furnish Client with certificate(s) of insurance evidencing compliance with the insurance requirements herein. Renewal certificates will be provided to Client upon the expiration of any required insurance policies. No policy will be cancelled or not renewed without thirty (30) days' prior written notice to Client.

#### ARTICLE 9. INDEMNITY

- 9.1 **Definitions.**
- (a) "TRC Group" means TRC and its subcontractors of all tiers, and each of their parent, subsidiary, and affiliated companies, and all their officers, directors, and employees.
  - (b) "Client Group" means Client and its parent, subsidiary, and affiliated companies, and all their officers, directors, and employees.
  - (c) "Losses" means any and all damages, costs, or expenses, including, but not limited to, reasonable attorneys' fees, expert fees, and expenses and costs of litigation.
  - (d) "Claims" means all third party claims, lawsuits, demands, or actions.
- 9.2 **TRC'S INDEMNITY OBLIGATIONS.**
- (a) TRC WILL INDEMNIFY AND HOLD HARMLESS CLIENT GROUP FROM ANY AND ALL LOSSES ARISING OUT OF CLAIMS TO THE EXTENT SUCH CLAIMS ARE CAUSED BY TRC'S NEGLIGENT ACTS, ERRORS, OR OMISSIONS IN THE PERFORMANCE OF ITS PROFESSIONAL SERVICES UNDER THIS AGREEMENT.
  - (b) WITH THE EXCEPTION OF CLAIMS ARISING UNDER SECTION 9.2(a), TRC WILL INDEMNIFY AND HOLD HARMLESS CLIENT GROUP FROM LOSSES, AND WILL DEFEND CLIENT GROUP FROM CLAIMS, DUE TO BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE TO THE EXTENT SUCH BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF TRC IN THE PERFORMANCE OF ITS WORK.
- 9.3 **CLIENT'S INDEMNITY OBLIGATIONS.** CLIENT WILL INDEMNIFY AND HOLD HARMLESS TRC GROUP FROM LOSSES ARISING OUT OF CLAIMS DUE TO BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE TO THE EXTENT SUCH BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CLIENT IN THE PERFORMANCE OF THIS AGREEMENT. ADDITIONALLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN THE EVENT TRC PERFORMS INTRUSIVE GROUND EXPLORATIONS OR INVESTIGATIONS, INCLUDING BUT NOT LIMITED TO, EXCAVATION, DRILLING, BORING, OR PROBING ("SUBSURFACE INVESTIGATION") AS PART OF THE WORK, CLIENT WILL INDEMNIFY TRC GROUP FROM AND AGAINST LOSSES RESULTING FROM, OR ARISING OUT OF, CLAIMS FOR DAMAGES TO SUBSURFACE OR UNDERGROUND UTILITIES OR STRUCTURES, INCLUDING BUT NOT LIMITED TO, GAS, TELEPHONE, ELECTRIC, WATER, OR SEWER UTILITIES, WHOSE LOCATIONS WERE NOT DESIGNATED OR IDENTIFIED TO TRC PRIOR TO THE COMMENCEMENT OF ANY SUBSURFACE INVESTIGATION.
- 9.4 **RISK OF LOSS TO THE WORK.** ADDITIONALLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IT IS UNDERSTOOD AND AGREED THAT CLIENT BEARS ALL RISK OF LOSS OF OR DAMAGE TO THE WORK AND THE FACILITIES WHICH ARE

THE SUBJECT OF THE WORK INCLUDING ALL MATERIALS AND EQUIPMENT TO BE INCORPORATED THEREIN, AND CLIENT HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY, AND HOLD TRC GROUP HARMLESS FROM ANY SUCH LOSS OR DAMAGE, HOWEVER SUCH LOSS OR DAMAGE SHALL OCCUR.

9.5 **CONDITIONS PRECEDENT.** EACH PARTY AGREES THAT AS A CONDITION PRECEDENT TO ITS OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS, THE INDEMNIFIED PARTY MUST GIVE PROMPT WRITTEN NOTICE TO THE INDEMNIFYING PARTY OF ANY CLAIM COVERED BY ARTICLES 9 OR 10, OR ANY OTHER INDEMNIFICATION CLAUSE IN THIS AGREEMENT. AS AN ADDITIONAL CONDITION PRECEDENT, FOR ANY CLAIM OTHER THAN A CLAIM ARISING OUT OF TRC'S ALLEGED PROFESSIONAL NEGLIGENCE, THE INDEMNIFIED PARTY MUST ALLOW THE INDEMNIFYING PARTY TO REPRESENT THE INTERESTS OF EVERY INDEMNITEE IN DEFENDING AND SETTLING SUCH CLAIM. IN THE EVENT ANY INDEMNITEE FAILS OR REFUSES TO TENDER THE DEFENSE OF ANY SUCH CLAIM TO THE INDEMNIFYING PARTY, SUCH PARTY'S DEFENSE, HOLD HARMLESS, AND INDEMNITY OBLIGATIONS RELATED TO THAT CLAIM WILL BE NULL AND VOID.

9.6 **APPORTIONMENT OF ATTORNEYS' FEES.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AFTER RESOLUTION OF A CLAIM UNDER ARTICLES 9 OR 10, OR ANY OTHER PROVISION HEREIN PROVIDING FOR ONE PARTY TO PROVIDE A DEFENSE, IF THE NEGLIGENCE OR OTHER LEGAL FAULT OF ANY INDEMNITEE IS DETERMINED EITHER BY MUTUAL AGREEMENT OF THE PARTIES, OR BY FINAL ADJUDICATION, TO HAVE BEEN A CONTRIBUTING CAUSE OF THE LOSSES RELATED TO SUCH CLAIM, THEN THE INDEMNIFIED PARTY MUST REIMBURSE THE DEFENDING PARTY FOR THE COSTS, ATTORNEYS' FEES, OTHER LEGAL EXPENSES, AND EXPERT FEES EXPENDED FOR DEFENSE IN THE SAME PROPORTION AS THE INDEMNITEES' PROPORTION OF NEGLIGENCE OR OTHER LEGAL FAULT.

#### ARTICLE 10. HAZARDOUS SUBSTANCES AND POLLUTION

10.1 **Pre-existing Conditions.** Client and TRC acknowledge that, prior to the start of this Agreement, TRC has not generated, handled, stored, treated, transported, disposed of, or in any way taken responsibility for any toxic or hazardous substance, including any contaminated soils, wastes, or substances, as defined by law ("Hazardous Substances") at the Project Site. Any Hazardous Substances originating with or generated by Client, or any pre-existing Hazardous Substances which are in, on, under, or migrating from the Project Site, or any Hazardous Substances introduced to the Project Site by any party other than TRC Group (collectively, "Non-TRC Hazardous Substances"), shall, as between TRC and Client, remain the sole and exclusive property of Client, it being the intention of the Parties that Client be solely responsible for such Non-TRC Hazardous Substances and shall be regarded as the owner and generator of all such Non-TRC Hazardous Substances for the purposes of this Agreement and all Work performed hereunder.

10.2 **Hazardous Substances Encountered During the Work; Disposition of Samples.** Client recognizes that, when it is known, assumed, or suspected that Hazardous Substances exist on or beneath the surface of the site of the Work, or within any structure thereon, certain sampling materials such as drill cuttings and drill fluids or asbestos removed for sampling, should be handled as if hazardous or contaminated. Accordingly, when TRC encounters Hazardous Substances during performance of the Work, such as when sampling is included in the scope of Work, and when determined by TRC in its sole and exclusive judgment to be necessary based on TRC's assessment of the degree of contamination, hazard, and risk, TRC will: promptly inform Client that containerization and labeling will be performed; appropriately contain and label such materials; and leave the containers on the Project Site for proper, lawful removal, transport, and disposal by Client. All samples of soil, groundwater, waste, rock, or other materials collected from the Project Site will remain the property of Client and will be returned to Client by TRC within thirty (30) days after submission of TRC's report, unless applicable law requires the retention or other disposition of such samples. All costs associated with the disposition or returning of samples will be charged to Client. TRC will not sign any hazardous waste manifests or bills of lading, and all such manifests and generator numbers will be in the name of, and signed by, Client. Nothing contained in this Agreement will be construed or interpreted as requiring TRC, its officers, agents, servants, or employees to assume the status of a generator, storer, treater, transporter, or disposer of hazardous substances, or an arranger for disposal of hazardous substances, or a disposal facility as those terms appear within the Resource Conservation Recovery Act, 42 USCA, Section 6901, et seq. (RCRA), or within any state statute of similar effect governing the treatment, storage, transportation or disposal of waste.

10.3 **TRC INDEMNITY FOR HAZARDOUS SUBSTANCES AND POLLUTION.** TO THE FULLEST EXTENT PERMITTED BY LAW, TRC SHALL ASSUME ALL RESPONSIBILITY FOR, INCLUDING CONTROL AND REMOVAL OF, AND SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS, ALL MEMBERS OF CLIENT GROUP FROM AND AGAINST ANY LOSSES ARISING OUT OF OR RELATING TO ANY HAZARDOUS SUBSTANCES BROUGHT TO OR RELEASED AT THE PROJECT SITE BY TRC GROUP.

10.4 **CLIENT INDEMNITY FOR HAZARDOUS SUBSTANCES AND POLLUTION.** TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD TRC GROUP HARMLESS FROM AND AGAINST ANY LOSSES ARISING OUT OF OR RELATING TO THE PRESENCE AT THE PROJECT SITE OF NON-TRC HAZARDOUS SUBSTANCES. CLIENT SHALL ASSUME ALL RESPONSIBILITY FOR, INCLUDING CONTROL AND REMOVAL OF, AND SHALL RELEASE, DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS ALL MEMBERS OF TRC GROUP FROM AND AGAINST ANY LOSSES ARISING OUT OF OR RELATING TO, ANY NON-TRC HAZARDOUS SUBSTANCES DISCOVERED AT, BROUGHT TO, OR RELEASED AT THE PROJECT SITE, OR LEFT ON THE PROJECT SITE AFTER CONTAINERIZATION BY TRC.

#### ARTICLE 11. ALLOCATION OF RISK

11.1 **Client's Separate Contractors.** The Parties expressly acknowledge and agree that unless otherwise expressly provided for in the Proposal, during the performance of the Work TRC shall not (a) supervise, direct or control Client's other contractors or subcontractors at any tier; (b) have authority over or responsibility for the means, methods, techniques or sequences of work performed by such other contractors or subcontractors; (c) be responsible for job site safety or enforcement of federal, state, local or other safety requirements in connection with the work performed by such other contractors or subcontractors; (d) be responsible for inspecting equipment or tools used by such other contractors or subcontractors; (e) be liable for any failure of such other contractors or subcontractors to comply with applicable laws, rules, regulations, ordinances, codes, permit stipulations, or orders; or (f) be liable for the acts or omissions of such other contractors or subcontractors including their failure to perform in accordance with their contractual responsibilities.

- 11.2 **Mutual Waiver of Consequential Damages.** Notwithstanding anything to the contrary in this Agreement, TRC and Client waive any and all claims against each other, and under no circumstances shall either Party be liable to the other, for incidental, consequential, special, multiple, and punitive damages arising out of or relating to this Agreement, regardless of whether such damages were foreseeable and whether or not the culpable Party was advised of the possibility of such damages, and regardless of whether a Party's claim against the other Party is based in contract (including contract termination), indemnity, warranty, tort (including negligence), strict liability or otherwise. This mutual waiver includes, but is not limited to, rental expenses, loss of use, loss of production, loss of income, loss of profit (except profit arising directly from the Work), loss of financing, loss of business, and loss of reputation.
- 11.3 **Limitation of Liability.** To the fullest extent permitted by law, the total liability in the aggregate of TRC and its employees, subcontractors, or suppliers to Client and anyone claiming by, through or under Client, on all claims of any kind arising out of or in any way related to TRC's Work, from any cause or causes whatsoever, including, but not limited to, negligence, errors, omissions, strict liability, indemnity, or breach of contract, will not exceed the compensation received by TRC under this Agreement. All such liability will terminate upon the expiration of the Correction Period specified in Section 6.3. THIS SECTION SETS FORTH TRC'S SOLE LIABILITY AND ENTIRE OBLIGATION AND CLIENT'S EXCLUSIVE REMEDY FOR ANY ACTION BROUGHT AGAINST TRC IN RELATION TO THIS AGREEMENT.

#### ARTICLE 12. DELIVERABLES

- 12.1 **Ownership of Deliverables.** All Deliverables are instruments of service in respect of the Project, and, if delivered to Client during the term of this Agreement, will become the property of Client upon payment therefor. Notwithstanding the foregoing, Client's ownership of the Deliverables will not include any ownership interest in TRC's preexisting information including, but not limited to, computer programs, software, patents, patents pending, standard details, templates, figures or specifications, or TRC's seal, stamp, or certification. Furthermore, Client understands and agrees that TRC is a developer of computer software and that TRC may use its own proprietary software, as well as others properly licensed to TRC, in the performance of the Work, and may develop other proprietary software during the course of performing the Work, which may include preliminary database formats and spreadsheets as well as programming procedures and code. Client understands and agrees that all such programs, efforts, and materials are and will be the exclusive property of TRC (and/or third parties). Additionally, except for the Deliverables, all field data and notes, laboratory test data, calculations, estimates, and other documents prepared by TRC will remain the property of TRC.
- 12.2 **Use of Deliverables.** Any Deliverable will be prepared solely for use of Client for this Project. The Deliverables are not intended or represented to be suitable to be reused by Client, or used or relied upon by others outside of Client or on extensions of the Project or on any other project. In the event Client, its employees, permitted assigns, successors, consultants, or contractors subsequently reproduces or otherwise uses the Deliverables or creates a derivative work based upon the Deliverables, unless prohibited by law, Client must remove or completely obliterate the original professional seals, trademarks, logos, and other indications on said Deliverables of the identity of TRC, its employees, and sub-consultants. TRC will be entitled to equitable compensation in connection with documenting any consent for Client or third parties to rely on the Deliverables for any purpose other than the purpose for which TRC prepared them.
- 12.3 **Unauthorized Use of Deliverables.** Client is prohibited from providing examples of TRC's Work to any individual or entity known by, or that reasonably should be known by, Client to be a competitor of TRC for the purpose of reducing or eliminating the Work associated with this Agreement. Furthermore, Client is prohibited from providing any statistical sampling information on assessment issues, including but not limited to statistical sampling information on production rates, remedy rates, numbers of pole change outs, types of violations, etc., that is provided to Client by TRC, all of which must be treated by Client as Confidential Information. In the event any Deliverables are utilized or disclosed by Client in any manner outside the scope of, or prohibited by, this Agreement, TRC reserves the right to notify directly any third party of the limitations of its unauthorized use of the Deliverables. Client expressly acknowledges that this reservation by TRC is necessary to protect and preserve TRC's professional reputation with respect to its work product.

#### ARTICLE 13. SAFETY

- 13.1 **Client's Safety Requirements.** Client must inform TRC of any written safety procedures and regulations applicable to the Project Site known to Client, as well as any special safety concerns or dangerous conditions at the Project Site. TRC and its employees will adhere to the written safety procedures and regulations provided by Client.
- 13.2 **Project Site Safety.** TRC commits to providing a safe and healthy work environment for its personnel and will require the same of its subcontractors. TRC shall be responsible for the health and safety of its employees and be responsible for its activities, and shall at all times conduct its operations under this Agreement in a manner to avoid risk of endangerment to the health and safety of persons and property. Unless expressly included in the scope of Work, TRC will not have any responsibility for overall job safety for the Project or at the Project Site. If TRC determines that its field personnel are unable to access required locations or perform required Work in conformance with applicable safety standards, TRC may suspend performance until its personnel can safely perform their work. TRC will promptly provide Client with written notice of the location and nature of the unsafe conditions. If Client fails to provide safe access within a reasonable time, TRC may terminate or suspend its performance in accordance with Article 14.
- 13.3 **Reporting of Incidents.** In the event TRC is involved in any loss, injury, or damage on Client's premises, or if such injury, loss or damage involves property, equipment, or personnel of Client, or if such accident involves any third party in any manner whatsoever while TRC is performing any duties within the scope of this Agreement, TRC will promptly report such injury, loss, or damage to the attention of Client's designated representative. If the matter involves loss of life, serious injury, or substantial property loss or damage, this report will be made by telephone call, followed immediately by a report in writing sent via email. If the matter is of a less serious nature, notification may be made by email or by letter posted in regular United States mail. All injuries, loss or damage must be reported. The reporting of any such matter will not imply any admission of liability on the part of TRC.

#### ARTICLE 14. TERMINATION AND SUSPENSION

- 14.1 **Termination for Default.** In the event of a material breach of this Agreement by either Party, the nonbreaching Party may give written notice to the breaching Party of the nature of the default and demand for cure. If the breaching Party fails to cure or materially

commence to cure within ten (10) calendar days from receipt of the default notice, the non-breaching Party may provide a written notice of termination of the Agreement to the breaching Party.

- 14.2 Termination or Suspension for Convenience. Either Party may terminate or suspend this Agreement, in whole or in part, by providing written notice to the other Party at least thirty (30) days prior to the effective date of termination.
- 14.3 Termination for Insolvency. Either Party has the right to immediately terminate the Agreement, by providing written notice to the other Party, in the event that (a) the other Party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (b) a substantial part of the other Party's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
- 14.4 Payments Due Post-Termination. TRC will be entitled to receive payment for all Work performed prior to the effective date of the suspension or termination, plus all reasonable costs associated with the suspension or termination, including, but not limited to, demobilization costs, re-stocking fees, cancellation fees, and costs incurred with respect to non-cancellable commitments. If the suspension or termination is the result of TRC's breach, prior to paying TRC Client will be entitled to offset its reasonable, direct, documented losses to the extent caused by TRC's breach. If the suspension or termination is the result of Client's breach, in addition to all other compensation to which TRC is entitled, TRC will be entitled to receive payment for its reasonable, direct, documented losses to the extent caused by Client's breach.

#### ARTICLE 15. DISPUTE RESOLUTION

- 15.1 Negotiation by Executives. The Parties will attempt in good faith to resolve any dispute, controversy, or claim arising out of or relating to the Project or the Agreement or the breach thereof ("Dispute") promptly by negotiation. When either Party determines it has exhausted its efforts to resolve a Dispute at the Project level, that Party may provide written notice to the other Party of the Dispute. Within fifteen (15) days after the date of such notice, executives of both Parties who have authority to agree to a settlement of the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement will meet at a mutually acceptable time and place (or, otherwise, at the Project Site), and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this subsection are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties do not resolve the Dispute within sixty (60) days of a Party notifying the other of the Dispute, unless extended by mutual agreement, either Party may commence litigation.
- 15.2 Governing Law, Jurisdiction, Venue. Unless otherwise required by law, this Agreement, and any act or transactions to which it will apply, or which are contemplated hereby or hereunder, will be governed by, and construed and interpreted in accordance with, the laws of the State of Connecticut without regard to choice of law or conflicts of law principles. This choice of law expressly includes the applicable statutes of limitation. Venue for all actions under the Agreement will be in Hartford, Connecticut.
- 15.3 Prevailing Party. In the event of any binding dispute resolution proceeding, declaratory or otherwise, brought by a Party arising out of or relating to this Agreement, including but not limited to any breach or default of the Agreement, the prevailing Party will be entitled to recover from the other Party any and all expenses of litigation, court costs, expert and consultant fees, employee time and expenses, and reasonable attorneys' and other legal fees associated with such proceedings (collectively, "Litigation Expenses"), accruing as of commencement of the proceeding and including execution and collection of any award or judgment. Notwithstanding the foregoing, if a written offer of compromise is made by either Party that is not accepted by the other Party within thirty (30) days after receipt and the Party not accepting such offer fails to obtain a more favorable judgment or award, the non-accepting Party will not be entitled to recover its Litigation Expenses (even if it is the prevailing Party) and will be obligated to pay the Litigation Expenses of the offering Party.

#### ARTICLE 16. MISCELLANEOUS

- 16.1 Independent Contractor and Waiver of Benefits. TRC is an independent contractor and will not be regarded as an employee or agent of Client. TRC agrees that it will not receive, and is not eligible to participate in, any employee benefit plan, insurance program, disability plan, medical benefits plan, or any other fringe benefit program sponsored and maintained by Client for its regular active employees, and TRC hereby waives any rights or claims related thereto.
- 16.2 Compliance with Laws. TRC will observe all applicable provisions of the federal, state, and local laws and regulations, including those relating to equal opportunity employment.
- 16.3 Severability. If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement will remain in full force and effect, and will in no way be affected, impaired, or invalidated thereby.
- 16.4 Waiver. No waiver of any provision of this Agreement, or consent to any departure therefrom, shall be effective unless in writing and signed by the waiving Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
- 16.5 Assignment. Neither Party will assign or transfer this Agreement without the prior written consent of the other Party. Moreover, as a condition of any such written consent, such assignment will be subject to the terms and conditions herein and no greater rights or remedies will be available to the assignee. In the event of an assignment by Client, Client will provide TRC with the information necessary for notices and invoicing (as applicable) prior to the effective date of the assignment. Client hereby agrees that TRC may subcontract and/or assign some or all of the Work to one or more of its corporate affiliates to the extent necessary to provide sufficient staffing and/or to comply with applicable insurance or professional licensing requirements.
- 16.6 Captions. The captions of the articles and sections in this Agreement are intended solely for the convenience of reference and will not define, limit, or affect in any way the provisions, terms, and conditions hereof or their interpretation.
- 16.7 Integration. This Agreement represents the entire understanding and agreement between the Parties and supersedes any and all prior or contemporaneous agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both Parties.

- 16.8 **Amendments.** This Agreement may be modified only by a Change Order or an amendment executed in writing by a duly authorized representative for each Party.
- 16.9 **No Third Party Beneficiaries.** Except as otherwise specifically provided for herein, this Agreement shall not be construed to confer any benefit on any third party not a Party to this Agreement, nor shall it provide any rights to such third party to enforce its provisions. Notwithstanding the foregoing, all liability-limiting provisions of this Agreement shall extend and inure to the benefit of all members of TRC.
- 16.10 **Signatures.** The Proposal, any amendment to these Terms and Conditions, and any Change Order may be executed in counterparts, each of which will be deemed an original, and all of which together will be deemed to be one and the same instrument. A copy of the Proposal and any subsequent modifications signed electronically and/or delivered by e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of a manually signed original. Each person executing the Proposal warrants that he/she is authorized to do so on behalf of the Party for whom he/she signs the Proposal.
- 16.11 **Notices.** Any notice permitted to be given by email shall be sent to the below representative. Any other notice required to be given pursuant to this Agreement must be in writing and sent by overnight delivery via USPS or a nationally recognized courier and delivered to the address set forth in the first paragraph above to the attention of the representative below:  
 If to TRC, send to the attention of: the person signing the Proposal  
 If to Client, send to the attention of: the recipient of the Proposal  
 Any notice so given will be deemed effective upon receipt. Either Party may change its representative or address effective ten (10) days after written notice thereof to the other Party.
- 16.12 **Remittance Information.** TRC remittance information for making payments is as follows:

**U.S. Postal Service:**

TRC Lockbox  
 PO Box 536282  
 Pittsburgh PA 15253-5904

**Overnight Packages:**

TRC Lockbox  
 Attn: 536282  
 307 23<sup>rd</sup> Street Extension, Suite 950  
 Pittsburgh, PA 15215  
 877-550-5933

**Wire Instructions (PREFERRED METHOD OF PAYMENT)**

<b>Beneficiary Account Name:</b>	TRC Companies, Inc. – Concentration
<b>Beneficiary Account Number:</b>	2232037090
<b>Bank Codes:</b>	
<b>ABA Number:</b>	011500120 (Wires only)
<b>Routing Number:</b>	211170114 (ACH only)
<b>Swift Code:</b>	CTZIUS33
<b>Bank Name:</b>	Citizens Bank
<b>Remittance Detail Email:</b>	ARemitdetail@trccompanies.com
<b>TRC Contact:</b>	Dawn Dostie
<b>Contact Phone Number:</b>	207-660-7222