

Macon County



NOTICE OF SPECIAL MEETING AND PUBLIC HEARING OF THE MACON COUNTY BOARD OF COMMISSIONERS

February 23, 2024

Please take note that there will be a Special Meeting and Public Hearing of the Macon County Board of Commissioners on Tuesday, February 27, 2024 at 5:30 p.m. in the commission boardroom on the third floor of the Macon County Courthouse, located at 5 West Main Street, Franklin, NC 28734. **The purpose of such Special Meeting shall include:**

1. Call to Order and Welcome by Chairman Shields
2. Announcements
3. Public Hearing to Consider Entering into Private Sale Agreement to Sell of County Owned Property and Provide Incentive Grant – Economic Development Director Tommy Jenkins
4. Discussion and Consideration of Proposal for the Public Safety Radio System at Macon Middle School – Project Manager Jack Morgan
5. Discussion and Consideration of Proposal for Supplemental Geotechnical Exploration and Consulting Services for Franklin High School – County Manager Derek Roland
6. Closed Session as Allowed Under NCGS 143-318.11
7. Adjourn

This the 23rd day of February, 2024 at 10:00 a.m.


Gary Shields, Chairman
Macon County Board of Commissioners

NOTICE OF SPECIAL MEETING AND PUBLIC HEARING

TO CONSIDER ENTERING INTO PRIVATE SALE AGREEMENT TO SELL COUNTY OWNED PROPERTY AND PROVIDE INCENTIVE GRANT.

Please take notice that the Macon County Board of County Commissioners will hold a special meeting and conduct a public hearing on Tuesday, February 27th at 5:30 p.m. in the Commissioners Board Room located on the third floor of the Macon County Courthouse, located at 5 West Main Street, Franklin, NC 28734. The purpose of the meeting is for the Board to consider a proposed sale of the Macon County Business Development property located at 185 Industrial Park Road, Franklin, Macon County, 28734 as an Economic Development endeavor in accordance with NCGS §158-7.1 and further consider a business incentive grant.

Notice is given that:

1. NCGS §158-7.1(d) provides that a county may contract to sell real property by private sale that is suitable for industrial and commercial use.
2. The tract of real property that the County is considering to sale is that approximate 2.7 acre tract of real property bearing PIN 6574437543, and consisting of a portion of the property first acquired by the County by deed recorded in Book T10, Page 162 of the Macon County Registry.
3. The proposed terms of the sale are:
 - a. Fee simple conveyance of the above referenced tract of real property;
 - b. A sale price of \$797,000, which sum is equal to the County Tax Assessed value and greater than the \$740,000 private appraised value of opinion dated June 15, 2023 prepared by Batson Company;
4. The proposed sale is expected to enable the purchasing business to create 95 new jobs at an average annual salary of \$90,263.
5. The county is considering making an incentive grant equal to \$100,000 to the company in return for its job creation and capital investments.

A copy of the County Tax Card showing an assessed value of \$797,000 and the Appraisal Report prepared by Batson Company dated June 15, 2023 with appraised value of \$740,000 can be viewed on the County website, maconnc.org, under "Public Announcements." A hard copy of the same may be obtained in the lobby at the County Annex Building, 5 West Main Street, Franklin, North Carolina.

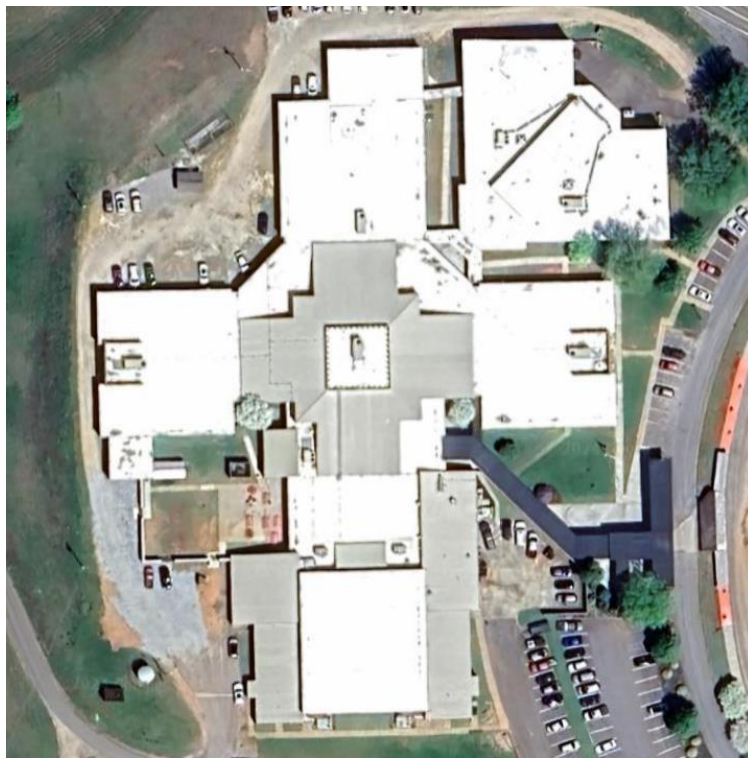
A copy of the proposed real estate sales contract for consideration by the Board may be obtained at the public hearing on February 27th.

Approved for Public Hearing at the February 13, 2024 meeting of the Macon County Board of County Commissioners.



Macon Middle School Athletic Building

BDA / ERRCS / Public Safety Radio System



Project Location:

1345 Wells Grove Rd
Franklin, NC 28734



INFO@TELECO.COM



800.800.6159



WWW.TELECO.COM



DATE: February 14, 2024
TO: Jack Morgan
FROM: Bobby Reiter
RE: Macon Middle School Athletic Building – Public Safety Radio System

Dear Mr. Morgan,

Thank you for the opportunity to provide a revised proposal for a solution that covers the entire school facility, which includes the new Athletic Building. We’ve researched the requirements from the various AHJ’s (Authority Having Jurisdiction) and are very familiar with the requirements for (Macon County) Franklin, NC. We are experienced with the nuances during permitting, inspections and reviews. It’s very important to vet your BDA System Integrators and the following FCC website is a good start: <https://signalboosters.fcc.gov/signal-boosters/search-boosters?boosterid=&name=teleco+inc&city=&county=&state=&callsign=&latitude=&longitude=&distance=0&search=Search> Search by company name “TELECO Inc” and you will understand TELECO’s skill when making your decision. Time is money and we’ll save you both in the long run.

It is important to not only look at cost, but it is also important to look at past performance of the design and installation team. When you choose an integrator by price alone, you may end up with considerable change orders that will total more than the original bid, but more importantly you will lose time and money from *not getting your Certificate of Occupancy* as planned. TELECO has the knowledge and experience in designing and installing CODE COMPLIANT systems the first time without additional change orders.

TELECO works closely with the AHJ to understand what they are looking for and require in a system. The ERRCS is a life safety tool that must be designed, installed, tested, and maintained by a company you can trust to ensure you are getting what you contract for. TELECO has an industry leader at the head of its engineering team, a Professional Engineer to sign & seal prints as required by code, an FCC General Radio Operators License (GROL) holder for testing & design verification, and OEM certifications for design, installation & maintenance for our installation field engineers & technicians. We have local technicians to deploy at a moment’s notice in case of system troubles and located in Greenville for 40 years.

*** The following proposal for a **Public Safety 700/800MHZ (FirstNet Capable) Class A Radio Enhancement DAS System** to include **System Design, Active & Passive Equipment Supply, Installation & Commissioning of Active Equipment Services** for **Macon Middle School**, located at **1345 Wells Grove Rd., Franklin, NC 28734**. This solution for Public Safety Radio Signal provides coverage throughout this facility. Buildings possess their own unique design & signal propagation signatures based on many parameters; thus, each building is a prototype. Final true up may include any additional work required by the AHJ not anticipated during design and may change based on actual test results from the AHJ final inspection once installation is complete.

Public Safety DAS – CODE DRIVEN

The figure stated includes:

1. Pre- & post engineering.
2. Pre- & post bench-mark testing.
3. Mobilization of certified technicians to install a BDA fireman’s booster system approved by the local Fire Marshal using AHJ approved equipment in *existing* or provided path (to be provided by others).
4. Coordination between municipality & AHJ inspectors (Fire, GSA Comm Div., electrical, structural).
5. Coordination with engineers, (electricians, structural framing contractors, roofers, fire alarms) as well as **Macon County, NC School Administration** management personnel.





6. The quotation is based on the Scope of Work and floor plans provided by **Macon County, NC School Administration.**
7. Quote valid for 60 days from date of quotation.
8. Pricing provided is for a complete solution for this building.

Investment Purchase

System Total \$ 68,900.00

System Design, Supply, Testing & Installation

ADD ALTERNATE – Armored Cable

2000’ armored cable in lieu of conduit if AHJ requires “metal raceway” **\$ 14,100.00**

Proposed Public Safety Equipment List		
Name	Unit	Quantity
700/800MHz Dual Band BDA, 769-775/799-816/851-861MHz, Class A, 33dBm/33dBm DL power, 27dBm UL power, 110VAC/48VDC, S1 Filter with FirstNET and ESMR reject Configuration, US Market	ea	1
100-240VAC Input / -48VDC Output, 60AH LFP battery, UL 2524 Standard Certified	ea	1
1/2” Serving Cable	foot	2000
3' jumper	ea	13
Indoor Dome Antenna	ea	13
"X" dB Coupler	ea	12
Lightning Arrester	ea	1
800 Yagi Antenna - Donor	ea	1
Ground kits	ea	1
Connector N-male for 1/2” Cable	ea	56
Misc equipment & consumables	ea	1
Document Box	ea	1
Engineering/permit prep/testing/commissioning	ea	1
Installation	ea	1

Certain requirements must be in place per IFC & NFPA Code - not included in our pricing.

- **The BDA system must be installed in an equipment room approved by the local Fire Marshal / AHJ.**





Assumptions:

- BDA quantities and locations, pathway locations and topology, are not specified by the owner, subject to change without benefit of a provided RF design.
- Fire rated rooms and chases matching the buildings frame fire rating are customer provided.
- This is not a prevailing wage project.
- Bi-directional amplifier (BDA) is required to be no more than 250ft from the roof or 250 linear feet of cable length between the BDA and the rooftop antenna.
- Roof penetrations for Donor Lines are not included in this quotation.
- Rated room with adequate ventilation and HVAC not included in this proposal, provided by others.
- Path is existing or provided by others. Conduit with pull string is not included in this proposal, by others. An add alternate pricing can be provided.
- All proposed cable paths are accessible via drop ceiling tiles, crawl space or access panels. Access panels are to be provided and placed by others.
- Repair or replacement of wire/conduit/equipment found cut or damaged by a party other than TELECO will be executed only upon written orders, and will be charged extra, over and above the estimate.
- Horizontal fire wall penetrations are in place or permitted.
- Customer shall provide 1 dedicated 20-amp 120VAC direct wire & 1 house power quad receptacle with ¼"x2"x6" Ground bar connected to bonded building/earth ground within 8 feet of the active equipment locations.
- Installation of fire modules, connections to fire alarm control panel, and 6 alarm points integration to FACP by others.
- Permit fees and bonding are not included but if required can be billed at cost + time at true-up.
- A mechanical lift is required for installing cables in the gymnasiums and Library common area. Lift Rental is not included in this proposal.
- Step ladders in excess of 10' are not required.
- The facility has built-in ladders or stairs for accessing the roof.
- Service elevator service will be available to all levels above the ground floor.
- Delays beyond TELECO's control may result in additional costs.
- 1-year parts warranty included on all TELECO supplied materials.
- 90 days workmanship warranty included on all TELECO installed materials.

Per IFC510.6 & NFPA 1221 11.3.9.2.3 all Public Safety Systems must be Monitored by the FACP, maintained operational at all times, and tested annually. TELECO offers a Service Level Agreement to keep you in compliance of the code.

Subject to Contractual Agreement

Jack Morgan – Macon County, NC

Date

Bobby Reiter

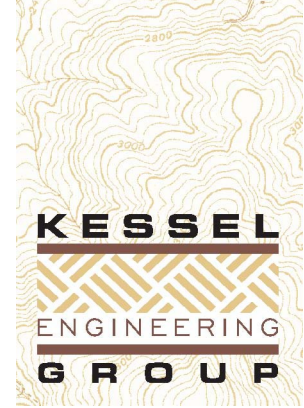
February 14, 2024

Date



February 5, 2024

Mr. Derek C. Roland
County Manager, Macon County
c/o Ms. Emily Kite, AIA
LS3P
emily.kite@ls3p.com



**Proposal for Supplemental Geotechnical Exploration and Consulting Services
Franklin High School – Fill Slope
Franklin, North Carolina
KEG Proposal No. PA21-3576-03**

Mr. Roland:

Kessel Engineering Group, PLLC (KEG) is pleased to submit this proposal for supplemental geotechnical exploration and consulting services for the proposed fill slope associated with the Franklin High School proposed new concept plan located in Franklin, North Carolina. The purpose of this exploration is to gather supplemental information on general subsurface conditions at the base of the major proposed slope and to perform additional slope stability analyses based upon that information. Included in this proposal is a summary of our understanding of the project information, our proposed scope of services for the geotechnical exploration, our estimated schedule for performing the work, and our requisite compensation and authorization for providing the outlined scope of services.

PROJECT INFORMATION

Previous project information was gathered as documented in our *Report of Supplemental Test Pit Exploration & Preliminary Slope Stability Analyses*, KEG Project No. JA21-4368-02, dated October 31, 2023. We have also been provided with the following document in an August 11, 2023 email from Wade Trim: *Franklin High School Stadium – Grading Overall Plan*, Sheet C3.0, dated 2022.10.21, by Wade Trim, marked “Not for Construction”, and showing existing and revised proposed topographic contours, and a single proposed site retaining wall footprint adjacent Phillips Street.

A fill slope with overall heights on the order of 64 feet is proposed to the north of the main construction area. The fill slope will primarily be seated at the base of the existing slope in the area and near the vicinity of the “Frog Town” area where the creek Crawford Branch runs from west to east. As documented in the aforementioned *Report*, existing fill was encountered in test pits within the slope bearing zone. Additional geotechnical exploration of the slope bearing zone consisting of soil test borings was recommended in order to develop a deeper subsurface soil profile to assist with final design and slope stability analyses, as well as developing more accurate cost estimates associated with remediation of existing fill at the slope bearing zone.

PROPOSED SCOPE OF SERVICES

Item 1: Supplemental Geotechnical Exploration

We propose to gather additional subsurface information at the proposed slope bearing zone by performing a series of approximately six to eight (6 to 8) soil test borings (ASTM D 1586) at the proposed slope bearing zone. Soil test borings will be performed in the general vicinity of previously-performed test pits in order to gather undisturbed samples and additional subsurface data.

Soil test borings will extend to depths of approximately 30 to 60 feet below the existing ground surface or until refusal, whichever occurs first. We anticipate approximately 300 linear feet of soil test borings will be performed. Additional auger borings may be performed to gather undisturbed samples. At the completion of drilling, the boreholes will be backfilled with the soil cuttings brought to the surface by the augers.

Temporary PVC casings will be installed in approximately two (2) borings to prevent borehole collapse and to observe stabilized ground water levels. Groundwater levels will be measured at 24 hours after drilling. Additional measurements will be performed if previous measurements are not consistent.

Samples obtained from the borings will be examined in our laboratory and visually classified by a geotechnical engineer (ASTM D2488). Undisturbed soil samples will be collected in conjunction with our field exploration for laboratory testing (ASTM D1587). The number of samples required depends on the soil conditions encountered at the site. We have assumed five (5) undisturbed samples will be obtained from soil test borings. Laboratory testing will be conducted on selected samples and will depend on the encountered conditions. However, we assume testing will include some combination of the following: triaxial shear testing (ASTM D4767), one-dimensional consolidation testing (ASTM D2435), grain size analyses (ASTM D6913), Atterberg limits testing (ASTM D4318), and/or moisture content testing (ASMT D2216).

Our geotechnical engineering services will be directed and supervised by a registered professional engineer specializing in geotechnical engineering. A report which presents the findings of our field exploration and results of supplemental geotechnical slope stability analyses will be provided. At a minimum, our report will include the following:

- An explanation of test procedures and presentation of test results
- Estimated subsurface profiles as necessary to illustrate subsurface conditions including standard penetration resistance test data and groundwater levels
- Results of geotechnical slope stability analyses and recommendations for increasing the global stability factor of safety to industry standard minimums, if required
- General geotechnical recommendations for remediation of the foundation bearing zone for the proposed fill slope

If we determine that additional subsurface exploration and/or laboratory testing are required in order to provide general geotechnical recommendations for slope analyses and design, we will provide a recommended supplemental scope of work. The assessment of site environmental conditions for the presence or absence of pollutants in the soil, rock, or groundwater of the site is beyond the scope of this exploration.

Item 2: Geotechnical Consulting Services

We understand that additional geotechnical consulting services may be required if revisions are made to the provided slope layout after issuing our supplemental report. We will provide these services as requested.

SITE COORDINATION

Prior to mobilizing onsite, we will contact NC811 for public underground utility location services. However, if private underground utilities are located at the site within the proposed test areas, we require that the Owner/Client locate these lines prior to our mobilization. We will coordinate our field work with the administration at FHS (or as otherwise directed). If special requirements for field work are required (e.g., weekend work, etc.), KEG should be notified in advance.

We anticipate that some minor site disturbance will be required to access the proposed test locations; however, we do not anticipate that erosion control measures will be required due to our site disturbance, and we do not propose to provide these services at this time. At this time, we do not propose to mobilize a dozer to the site to rough-grade access roads or to provide other clearing services. If we determine this to be necessary, we will contact you prior to proceeding with this work.

COMPENSATION

Item 1: Supplemental Geotechnical Exploration

We will provide the scope of service outlined in this section of our proposal according to the unit rates provided on the attached 2024 fee schedule. We anticipate the fees for the *Item 1: Supplemental Geotechnical Exploration* section of this proposal will be on the order of \$20,000 to \$21,000.

This fee estimate includes subcontractor costs associated with mobilizing/providing the drill rig/operator to perform the soil test borings and auger borings (approximately \$8,100) and subcontractor laboratory fees for triaxial shear and consolidation sample transport and testing (approximately \$3,700). If unexpected site or subsurface conditions are encountered and it becomes necessary to modify our exploration plan, we will contact you to discuss recommended variations in the exploration plan and any subsequent fee changes.

Item 2: Geotechnical Consulting Services

We will provide the scope of service outlined in this section of our proposal according to the unit rates provided on the attached 2024 fee schedule. Fees will vary depending on the scope requested by the Client.

SCHEDULE

Based on our subcontractor's present schedule, we can begin field work within approximately five to ten working days of receiving written authorization to proceed and after underground utilities are located. Field work will likely require three to four working days, weather permitting. We anticipate laboratory testing will be completed approximately three weeks after the completion of field work. Our written report will be provided approximately two weeks after laboratory testing has been completed.


AUTHORIZATION

To authorize us to provide the scope of service outlined herein, please complete and return one copy of the enclosed Acceptance Sheet. Please note that the attached Terms and Conditions are a part of this proposal. Exceptions to this proposal or special requirements not covered in the proposal should be listed on the Acceptance Sheet. If a purchase order is issued to us for providing the services outlined in this proposal, please reference the proposal number noted on this proposal and the date in the purchase order. Issuance of a purchase order will be an acceptance of this proposal and associated documentation, and considered authorization to provide the services outlined herein.

Kessel Engineering Group, PLLC appreciates the opportunity to offer our professional geotechnical engineering services on this project. If you have any questions concerning this proposal, please feel free to contact us.

Sincerely,
KESSEL ENGINEERING GROUP, PLLC


Ian Johnson, P.E.
Senior Engineer


Caitlin Warner, P.E.
Senior Engineer

Attachments: 2024 Fee Schedule
Acceptance Sheet
Terms and Conditions

Distribution: Ms. Emily Kite, AIA, LS3P; via email at emily.kite@ls3p.com

**KESSEL ENGINEERING GROUP
2024 FEE SCHEDULE**

ENGINEERING SERVICES

Staff Professional, per hour.....	\$95.00
Project Professional, per hour	\$120.00
Senior Engineer, per hour	\$140.00
Principal Engineer, per hour	\$160.00
Engineering Technician, per hour.....	\$50.00
Word Processor, per hour	\$50.00
Mileage, per mile	\$00.80

DRILLING & MONITORING SERVICES

Mobilization (Western North Carolina), per track rig	\$1,200.00
Soil Test Borings, per foot	\$16.00
Auger Boring, per foot.....	\$12.50
Drilling Day Rate**	\$2,750.00
Undisturbed 3-inch Shelby Tube samples, each.....	\$150.00
Additional split spoon samples, each.....	\$25.00
Bulk samples, each.....	\$50.00
Patching in concrete or asphalt, each.....	\$30.00
Difficult moving and standby, per hour	\$250.00
Inclinometer installation in existing borehole, per foot.....	\$10.00
Per diem, 2-man crew drill crew, per day.....	\$350.00
Dozer, per day.....	\$2,250.00

LABORATORY SERVICES – SOILS TESTING

Natural Moisture Content, each	\$12.00
Liquid and Plastic (Atterberg) Limits, each.....	\$80.00
Grain Size, Wash No. 200 Sieve, each	\$80.00
Grain Size, Hydrometer Analysis, each.....	\$170.00
Percent Finer than No. 200 Sieve, each	\$40.00
Triaxial Shear (consolidated undrained), each.....	\$975.00
One-dimensional consolidation, each	\$625.00
Permeability, each.....	\$600.00
Standard Proctor Compaction Test (ASTM D-698), each.....	\$130.00

Notes: * Items not listed on this Fee Schedule will be quoted upon request. Miscellaneous expenses will be invoiced at our cost plus 15 percent.
 ** Drilling day rate will be applied in lieu of drilling mobilization and footage rates when less than 100 linear feet of soil test borings with standard penetration resistance are performed.

KESSEL ENGINEERING GROUP, PLLC
582 Hendersonville Road, Suite One
Asheville, North Carolina 28803

Phone (828) 277-6351
Fax (828) 277-6355

ACCEPTANCE SHEET

The purpose of this sheet is to obtain your written authorization for our services as outlined in the attached proposal. Compensation for our services will be based on the actual work performed and will be based on the unit rates provided on the attached fee schedule. Please note that the Terms and Conditions are a part of this contract. Please list any exceptions or special requirements in the space provided below under "Special Instructions". Transmittals will be issued electronically via email. Please indicate in the "Special Instructions" section if paper copies of transmittals are required. If applicable, please also provide a distribution list of individuals to whom we should send a carbon copy of transmittals in reference to this project. This will aid in our distributing information to the appropriate individuals in a prompt and timely manner.

**Proposal for Supplemental Geotechnical Exploration and Consulting Services
Franklin High School – Fill Slope
Franklin, North Carolina
KEG Proposal No. PA21-3576-03**

WORK AUTHORIZED BY:

REMIT INVOICE TO: (if different)

Signature Date

Print Name

Title

Company Name

Address

City, State, Zip

Email Address

Signature Date

Print Name

Title

Company Name

Address

City, State, Zip

Billing Contact, Phone Number

SPECIAL INSTRUCTIONS:

TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** Kessel Engineering Group, PLLC, through and by its officers, employees and subcontractors, (hereinafter KEG) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in our proposal. No third party beneficiaries are intended by this agreement.
2. **PAYMENT TERMS.** Client agrees to pay KEG's invoice upon receipt. If payment is not received within 30 days from the Client's receipt of invoice, Client agrees to pay a service charge on the past due amount at the greater of 1% per month or the allowable legal rate, including reasonable attorney's fees and expenses if KEG's fee is collected through an attorney. No deduction shall be made from invoice on account of liquidated damages unless expressly included in the Agreement. After five days prior notice to Client, KEG may suspend services until paid on any project where payment of invoiced amounts not reasonably in dispute is not received by KEG within 60 days of Client's receipt of KEG's invoice. Invoices will be sent approximately monthly for the services performed.
3. **STANDARD OF CARE.** KEG will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of KEG's profession practicing in the same or similar locality at the time of service. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY OUR PROPOSAL OR BY OUR ORAL OR WRITTEN REPORTS.
4. **INSURANCE.** KEG maintains insurance coverage as follows:
 - a. Worker's Compensation Insurance.
 - b. Employer's Liability Insurance.
 - c. Commercial General Liability Insurance.
 - d. Professional Errors and Omission.Certificates of Insurance can be provided upon acceptance of this agreement and upon request.

5. **PROFESSIONAL LIABILITY.** For additional consideration from KEG of \$10.00, receipt of which is hereby acknowledged, Client agrees that KEG's liability, and that of its officers, directors, employees, agents and subcontractors, to Client or any third party due to any negligent professional acts, errors or omissions or breach of contract by KEG will be limited to an aggregate of \$10,000 or KEG's total charges, whichever is greater. If Client prefers to have higher limits of professional liability, KEG agrees to increase the aggregate limit, up to a maximum of \$100,000, upon Client's written request at the time of accepting our proposal, provided Client agrees to pay an additional consideration of 5% of total charges, or \$500, whichever is greater. The additional charge for the higher liability limit is because of the greater risk assumed by KEG and is not a charge for additional professional liability insurance. This limitation shall not apply to the extent prohibited by law.
6. **SITE OPERATIONS.** Client will arrange for right-of-entry to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

KEG's field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated location. KEG's field personnel will avoid hazards or utilities which are visible to them at the site. If KEG is advised in writing of the presence or potential presence of underground or above ground obstructions, such as utilities, we will give special instructions to our field personnel. KEG is not responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions owned by Client or third parties, except to the extent such damage or loss is a result of KEG's negligence. Otherwise, Client agrees for the additional consideration of \$1.00, to indemnify and hold KEG, its directors, officers, employees, agents and subcontractors harmless, from any such claims, suits or losses, including related reasonable attorney's fees.

KEG will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in KEG's proposal, KEG's charges do not include cost of restoration due to any related damage which may result. If Client requests KEG to repair such damage, KEG will do so at an appropriate additional cost.

Field tests or boring locations described in KEG's report or shown on sketches are based on specific information furnished by others or estimates made in the field by KEG personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in KEG's proposal or report.

7. **FIELD REPRESENTATIVE.** The presence of KEG or its subcontractor's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation and/or field testing of specific aspects of the project as authorized by Client. Should a contractor(s) not retained by KEG be involved in the project, Client will advise such contractor(s) that KEG's services do not include supervision or direction of the means, methods or actual work of the contractor(s), its employees or agents. Client will also inform contractor that the presence of KEG's field representative for project administration, assessment, observation or testing will not relieve the contractor of its responsibilities for performing the work in accordance with the plans and specifications.

If a contractor (not a subcontractor of KEG) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for working conditions on the job site, including security and safety of all persons and property during performance of the work, and compliance with all Client safety requirements and OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that KEG will not be responsible for job or site safety or security on the project, other than for KEG's employees and subcontractors, and that KEG does not have the duty or right to stop the work of the contractor.

8. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing KEG's services. If this occurs, KEG will promptly notify and consult with Client, but will act based on KEG's sole judgment where risk to KEG personnel is involved. Possible actions could include:
 - a. Complete the original Scope of Services in accordance with the procedures originally intended in KEG's proposal, if practicable in KEG's judgment;
 - b. Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
 - c. Terminate the services effective on the date specified by KEG in writing.

9. **DOCUMENTS.** KEG will furnish Client the agreed upon number of written reports and supporting documents. These instruments of services are furnished for Client's exclusive internal use and reliance, use of Client's counsel, use of Client's qualified bidders (design services only) and for regulatory submittal in connection with the project or services provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:
 - a. All documents generated by KEG under this Agreement shall remain the sole property of KEG. Any unauthorized use or distribution of KEG's work shall be at Client's and recipients sole risk and without liability to KEG. KEG may retain a confidential file copy of its work product and related documents.
 - b. If Client desires to release, or for KEG to provide, our report(s) to a third party not described above for that party's reliance, KEG will agree to such release provided we receive written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement (e.g. Secondary Client Agreement). Reports provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that KEG's report(s) reflects conditions only at the time of the study and may not reflect conditions at a later time. Client further acknowledges that such request for release creates a potential conflict of interest for KEG and by this request Client waives any such claim if KEG complies with the request.

- c. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by KEG pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without KEG's prior written approval.
- d. Client shall furnish documents or information reasonably within Client's control and deemed necessary by KEG for proper performance of our services. KEG may rely upon Client-provided documents in performing the services required under this Agreement; however, KEG assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client, but KEG may retain one confidential file copy as needed to support its report.
- e. Upon Client's request, KEG's work product may be provided on magnetic media. By such request, Client agrees that the written copy retained by KEG in its files, with at least one written copy provided to Client, shall be the official base document. KEG makes no warranty or representation to Client that the magnetic copy is accurate or complete, but will correct in good faith any omissions or errors brought to KEG's attention by Client. Any modifications of such magnetic copy by Client shall be at Client's risk and without liability to KEG. Such magnetic copy is subject to all other conditions of this Agreement.
10. CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.
11. OPINIONS OF COST. If requested, KEG will use its best efforts and experience on similar projects to provide realistic opinions or estimates of costs for remediation or construction as appropriate based on reasonably available data, KEG's designs or KEG's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise, in writing with KEG. Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond KEG's control.
12. TESTIMONY. Should KEG or any KEG employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing, or trial, in relation to services provided under this Agreement, and KEG is not a party in the dispute, then KEG shall be compensated by Client for the associated reasonable expenses and labor for KEG's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides KEG such compensation, Client will receive a credit or refund on any related double payments to KEG.
13. CONFIDENTIALITY. KEG will maintain as confidential any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Client.
14. GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of North Carolina.
15. PRIORITY OVER FORM AGREEMENT/PURCHASE ORDERS. The Parties agree that the provisions of these terms and conditions shall control over and not be superseded by any provisions of any other documents or writings and may be amended only by written instrument signed by both Client and KEG. Client may issue purchase orders to KEG to satisfy Client's purchasing requirements. It is agreed that the terms and conditions included in such purchase orders shall be considered deleted in their entirety and such terms and conditions shall be void.
16. SURVIVAL. All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and KEG shall survive the completion of the services and the termination of this Agreement.
17. SEVERABILITY. In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.
18. ASSIGNMENT. This Agreement may not be assigned by either party without the prior permission of the other.
19. CONSIDERATION. The parties agree that the charges for KEG's services are sufficiently adjusted to include any specific consideration payable to Client under these terms and conditions.
20. INTEGRATION. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

END OF DOCUMENT