

**RESOLUTION: 185-17**

**RESOLUTION AUTHORIZING AGREEMENT FOR CERTAIN  
PROFESSIONAL SERVICES ADOPTED BY THE BOROUGH OF  
CLAYTON  
NUNC PRO TUNC**

*WHEREAS*, there exists a need for specialized services on behalf of the Borough of Clayton; and

*WHEREAS*, funds are or will be available for this purpose; and

*WHEREAS*, the Local Public Contracts Law, N.J.S.A. 40A:11-1 requires that notice with respect to contracts for Professional Services awarded without competitive bids must be publicly advertised.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That T&M Associates, of Middletown, New Jersey is hereby hired to provide Groundwater Sampling and Analysis for Clayton Water Yard not to exceed \$5,000.00.
2. The term of this contract shall be from September 14, 2017 to September 13, 2018.
3. The Contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-11-5(1)(a), and the Fair and Open Process because it is for services performed by persons authorized by law to practice a recognized profession.
4. A copy of this resolution as well as the Contract shall be placed on file with the Clerk of the Borough of Clayton.
5. A notice in accordance with the Local Public Contracts Law of New Jersey shall be published in The Sentinel or South Jersey Times.
6. The Mayor and Clerk of the Borough of Clayton are hereby authorized to execute a Contract outlining the above on behalf of the Borough of Clayton.

*ADOPTED* at a meeting of the Mayor and Council of the Borough of

Clayton, County of Gloucester, and State of New Jersey on September 14, 2017.

BOROUGH OF CLAYTON

A handwritten signature in black ink, appearing to read 'T. Bianco', written over a horizontal line.

THOMAS BIANCO, Mayor

Attest:

A handwritten signature in black ink, appearing to read 'Christine Newcomb', written over a horizontal line.

CHRISTINE NEWCOMB, Borough Clerk

**CERTIFICATE OF AVAILABILITY OF FUNDS**

From: Donna Nestore, Chief Financial Officer, Borough of Clayton

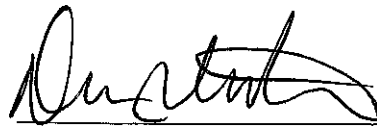
To: Mayor and Council, Borough of Clayton

Re: T&M Associates – Groundwater Sampling and Analysis – Clayton Water Yard

AMOUNT OF CONTRACT: \$5,000.00

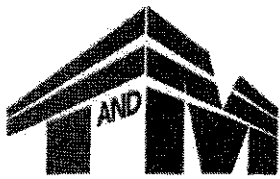
Any expenditures required for the above referred contract are properly chargeable to the 2017 Municipal Budget/Environmental Engineering.

I hereby certify that, as of this date, adequate funds have been appropriated in said line and are available to satisfy the expenditure required for the above referenced contract.

A handwritten signature in black ink, appearing to read 'Donna Nestore', is written over a horizontal line.

DONNA NESTORE  
Chief Financial Officer  
Borough of Clayton

Dated: September 14, 2017



**YOUR GOALS. OUR MISSION.**

August 22, 2017

Susan Miller  
Borough Administrator  
Borough of Clayton  
125 North Delsea Drive  
Clayton, New Jersey 08312

**Re: Proposal for Groundwater Sampling and Analysis  
Borough of Clayton Water Yard  
Clayton, Gloucester County, New Jersey  
CLAYOH-16010**

Dear Ms. Miller:

T&M Associates (T&M) has prepared this proposal to perform one round of groundwater sampling at the Borough of Clayton Water Yard (site). The groundwater sampling will include the collection and analysis of groundwater samples from monitoring wells MW-4, MW-5, MW-6, MW-7, MW-8, MW-9, MW-10 and MW-11. The monitoring wells were installed to delineate groundwater impacts from a leaking underground storage tank (UST). The objective of this proposal is to determine if groundwater delineation is complete for benzene and xylene whose concentrations remain above their respective New Jersey Department of Environmental Protection (NJDEP) Groundwater Quality Criteria (GWQC).

As you are aware the NJDEP issued correspondence on August 18, 2017 indicating that the site is now in direct oversight. The correspondence listed several tasks that the NJDEP requested to be performed. Some of these tasks may be eliminated if groundwater sampling results are favorable.

Work will be performed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), Technical Requirements for Site Remediation (N.J.A.C. 7:26E) and other applicable regulations, rules and guidance.

Provided below is our scope of work and cost estimate, schedule.

#### **SCOPE OF WORK**

The proposed scope of work includes activities necessary to evaluate the delineation of benzene in groundwater at the site. The scope of work will be performed in the following task listed below.

##### **Task 1: Groundwater Sampling and Analysis**

Groundwater samples will be collected from 8 monitoring wells (MW-4, MW-5, MW-6, MW-7, MW-8, MW-9, MW-10 and MW-11) to determine if groundwater delineation is complete for benzene and xylenes. T&M will subcontract with a New Jersey certified groundwater sampling team to perform the sampling. Groundwater samples will be collected via low-flow sampling methods. Prior to sampling



the wells will be gauged and purged. Groundwater samples will be submitted to Aqua Pro-Tech Laboratories, a New Jersey licensed laboratory, for the volatile organic compound analysis. Samples will be analyzed on a standard two week turn-around-time.

Once the data is received from the laboratory we will compare the results to the NJDEP GWQC. We will prepare a table of the results and a brief summary of the results.

#### COMPENSATION

We will provide the scope of services described above at a Lump Sum fee of **\$5,000**.

Invoices for our services will be submitted monthly and will show the percentage of our fee billed for the month based on the percentage of our work completed. Invoices will also show a summary of the contract value, completion percentage, amount previously billed, and contract value remaining.

#### SCHEDULE

T&M is prepared to execute the scope of work immediately upon approval from the Borough. Groundwater sampling will be performed one week from approval. Results from the sampling will be received two weeks from the sampling date. We will prepare the table and summary of the data one week after receipt of the final laboratory report.


#### CLOSING


Please indicate your acceptance of this proposal by signing in the space provided below and returning one (1) copy to this office. Acceptance of this proposal signifies the client's understanding that T&M will not be retained or asked to perform any services unless funding is secured and is available to pay all invoices within forty-five (45) days of receipt. Receipt of the signed proposal shall be considered authorization to proceed with all items described within this agreement. Any items not intended to be authorized shall be clearly and specifically noted as such within the client's signed and returned proposal.

We thank you for the opportunity to submit this proposal. Please feel free to contact me directly with any questions or comments regarding the scope, sequence or fees as indicated at 610.234-4242, or via email to [rminarovic@tandmassociates.com](mailto:rminarovic@tandmassociates.com).

Very truly yours,

**T&M ASSOCIATES**

  
Raymond J. Minarovic, CPG, LSRP  
Supervising Environmental Scientist

  
Timothy Kinsella, CPG  
Group Manager, Vice President



ACCEPTED BY:

NAME:

Signature

Thomas Bianco

Print Name

TITLE:

Mayor

COMPANY:


Borough of Clayton

DATE:

9-14-17

The above signed represents that they have read and understand the attached Standard Terms and Conditions and have the authority to enter into this agreement on behalf of the Client named above. The above signed also acknowledges that this contract includes a Limitation of Liability Clause as part of the Standard Terms and Conditions.



 2017 Schedule of Hourly Billing Rates	
Billing Titles	Billing Rate/Hour
Administrative Support Staff	\$87.00
Staff Environmental Scientist I	\$104.00
Staff Environmental Scientist II	\$147.00
Senior Staff Environmental Scientist	\$159.00
Principal Environmental Scientist	\$170.00
Supervising Environmental Scientist	\$186.00
Group Manager	\$193.00

T&M occasionally uses part-time and temporary staff to meet peak workload demands and these staff will be billed in accordance with the rate schedule above.



## SCHEDULE OF MISCELLANEOUS CHARGES

Effective: January 1, 2016

### Contracted Services

Including subconsultants, contracted labor,  
subprofessionals, and subcontractors ..... Invoice Cost + 15%\*

\*The client may contract directly with subconsultants, contracted labor, subprofessionals and subcontractors to eliminate the 15% markup.

### Direct Expenses

- Disbursements to agencies, vendors and suppliers

Including equipment; interstate transportation;  
permit, application, review, and similar fees; printing,  
plotting, reproduction, binding, and other graphic  
services; outside computer services; title, research,  
and data services; courier and express services;  
project field office expenses; and out-of-state  
telephone costs ..... Invoice Cost

- Other Charges

Mileage ..... Commensurate with IRS Guidelines

Travel and Subsistence ..... Invoice Cost

Field Vehicles ..... \$105/Day





## LSRP STANDARD TERMS AND CONDITIONS (For Licensed Site Remediation Professional Services)

These Standard Terms & Conditions shall govern the performance of services pursuant to this Agreement.

As used herein, the term "Client" refers to the Client identified in T&M's Proposal / Scope of Services. The term "T&M" refers to T&M Associates. The Client and T&M may be referred to individually as a "Party" or collectively as the "Parties". The term "Agreement" refers to this contract between T&M and the Client consisting of (1) the T&M Proposal / Scope of Services, and (2) these Standard Terms and Conditions. The "Project" is identified in T&M's Proposal / Scope of Services. **SCOPE OF SERVICES.**

- a. Descriptions of the services to be provided by T&M are set forth in the Proposal/Scope of Services (the "Services"). Services not set forth in the Scope of Services, or specifically itemized as additional services, are excluded from the scope of T&M's Services (the "Additional Services") and T&M assumes no responsibility to perform such Additional Services. If any Additional Services become necessary during the course of the Project, T&M can perform such Additional Services in accordance with a written agreement between the Client and T&M.
- b. T&M shall have no obligation to commence the Services as stipulated in this Agreement and / or any associated work authorization until both this Agreement and any applicable work authorization are fully executed and delivered to T&M.

### 2. COMPENSATION.

- a. **BILLING RATES.** Client shall compensate T&M at the billing rates identified in T&M's Proposal. Unless otherwise provided in the Proposal, compensation for Services shall be based on T&M's Schedule of Hourly Billing Rates and Schedule of Miscellaneous Charges in effect at the time Services are performed.
- b. **REIMBURSABLE EXPENSES.** Client shall pay T&M for reimbursable expenses according to the current Schedule of Miscellaneous Charges including, without limitation, application fees, printing and reproduction, courier and express delivery service, bulk / special mailings, facsimile transmissions and other costs of acquiring materials specifically for Client and related charges.
- c. **INVOICES.** T&M shall submit invoices monthly and payment in full is due upon presentation. Services shall be billed at a minimum increment of 0.25 hour. If Client fails to make any payment due T&M for services and expenses within thirty (30) days after receipt of invoice, the amounts due T&M will accrue interest at the rate of one percent (1.0%) per month until paid in full.
- d. **SUSPENSION OF SERVICES.** Once a payment is PAST DUE, the Client shall be deemed to be in breach of this Agreement and any other agreements between the Client and T&M. If a payment is PAST DUE, T&M may suspend performance of all Services provided to the Client until T&M has been paid all amounts due and T&M shall have no liability whatsoever to the Client for any costs, delays or damages resulting from T&M's suspension of services caused by the Client's breach of this



Agreement.

- e. **TERMINATION.** Client or T&M may terminate this Agreement with ten (10) days prior written notice for convenience or cause. In the event of termination, T&M shall be paid for all services rendered and costs incurred up to the date of termination.
  - f. **COLLECTION COSTS.** In the event legal action is necessary to enforce the payment provisions of this Agreement, T&M shall be entitled to recover from the Client the reasonable attorneys' fees, court costs and expenses incurred by T&M in connection therewith.
  - g. **FEE DURATION & ANNUAL ADJUSTMENT.** The hourly rates charged for T&M employees are adjusted annually in January to reflect changes in the various elements that comprise such hourly rates. All adjustments will be in accordance with generally accepted practices consistent with T&M's procedures.
3. **STANDARD OF CARE.** The standard of care for all professional services performed or furnished by T&M under this Agreement will be the care and skill ordinarily used by members of T&M's profession practicing under similar circumstances at the same time and in the same locality and based on facts and information available at the time services are provided. T&M makes no warranties, expressed or implied in connection with T&M's Services.
  4. **OWNERSHIP AND USE OF DOCUMENTS.** All reports, plans, specifications, computer files, field data, notes and other files and documents prepared by T&M pursuant to this Agreement (the "Documents") are instruments of T&M's professional services and T&M shall retain an ownership and property interest therein. Provided full payment for Services rendered and costs incurred is made by the Client to T&M, T&M grants to the Client a license to use the Documents for the purpose of constructing, occupying and maintaining the Project. The Documents are not intended or represented to be suitable for reuse by the Client or others on extensions of this Project or on any other project. Any reuse or modification of the Documents without T&M's written approval shall be at Client's sole risk and without liability to T&M and the Client agrees to indemnify, defend and hold harmless T&M from all claims, damages and expenses, including attorneys' fees and costs, arising out of such reuse by the Client or by others acting through the Client.
  5. **CONFIDENTIALITY.** All information which the Client deems confidential shall be prominently branded "Confidential Information" prior to releasing said information to T&M. T&M will not intentionally divulge information regarding the Project which the Client designates as confidential, except (i) to the Client or parties designated by the Client; (ii) in response to a subpoena or other similar legal requirements; and / or (iii) withholding such information could create risk of significant harm to the public. Information which is in the public domain or which is provided to T & M by third parties is not considered confidential. Any information which is not clearly marked "Confidential Information" by the Client prior to disclosure to T&M shall not be deemed as confidential. The Client authorizes T&M to identify the Client as a T&M client and use photographs or illustrations of the Project and non-confidential information in any sales or marketing literature.
  6. **CONSTRUCTION COST ESTIMATES.** The Client shall advise T&M in writing of any budgetary limitations for the overall cost of construction. T&M will endeavor to work within such limitations and will, if requested and included within the Proposal / Scope of Services, submit to the Client an opinion of probable construction cost. Opinions of probable construction cost will represent T&M's reasonable judgment as a design professional familiar with the construction industry, but does not represent or guarantee that bids or negotiated prices will not vary or exceed budgets or opinions of probable cost. The Client acknowledges that neither T&M nor the Client has control over the cost of labor, materials or



methods by which contractors determine prices for construction.

**7. RESPONSIBILITY DURING CONSTRUCTION.** T&M's Services during the construction phase are intended to provide the Client a greater degree of confidence that the completed work of contractor(s) will conform in general to the approved plans and related documents. T&M will endeavor to observe the progress and quality of the executed work of contractor(s) and determine in general if such work is proceeding in accordance with the requirements of the Project. T&M shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. T&M shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractor(s) or for any failure of any contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to a contractor's furnishing and performing the work. Accordingly, T&M neither guarantees the performance of any contractor nor assumes any responsibility for any contractor's failure to furnish and perform its work in accordance with the contract documents.

**8. SITE CONDITIONS.** T&M shall not be liable for damage or injury to any subterranean structures (including, but not limited to, utilities, mains, pipes, tanks, and telephone cables) or any existing subterranean conditions; or the consequences of such damage or injury, if (with respect to this clause) (i) such structures or conditions were unknown and were not identified or shown, or were incorrectly shown, in information or on plans furnished to or obtained by T&M in connection with the Services; (ii) concealed conditions encountered in the performance of the Services; (iii) concealed or unknown conditions in an existing structure at variance with the conditions indicated by the Proposal / Scope of Services or work authorization; or (iv) unknown physical conditions below the surface of the ground that differ materially from those ordinarily encountered and are generally recognized as inherent in work of the character provided under this Agreement.

The Client shall provide to T&M all plans, maps, drawing and other documents identifying the location of any subterranean structures on the Site. Prior to location of any drilling or excavation below the ground surface, T&M shall obtain the concurrence of the Client as to the location for such drilling or excavation. Should: (i) concealed conditions be encountered in the performance of the Services; (ii) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Proposal / Scope of Services or work authorization; or (iii) unknown physical conditions below the ground differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided under this Agreement; then the amount of this Agreement and / or time for performance shall be equitably adjusted by change order upon claim by either Party made within twenty (20) days after the first observance of the conditions.

The Parties agree that reports prepared by or on behalf of T&M pertaining to site conditions, including, but are not limited to, environmental, geotechnical or geologic reports (*hereinafter collectively the "Site Condition Reports"*), are prepared for the exclusive use of the Client and its authorized agents, and that no other party may rely on the Site Condition Reports unless T&M agrees in advance to such reliance in writing. The Site Condition Reports are not intended for use by others, and the information contained therein is not applicable to other sites, projects or for any purpose, except the one originally contemplated in the Services. The Client acknowledges that the Site Condition Reports are based on conditions that exist at the time a study is performed and that the findings and conclusions of the Site Condition Reports may be affected by the passage of time, by manmade events such as construction on or adjacent to the site, or by natural events such as floods, earthquakes, slope instability or groundwater fluctuations, among others. The Parties agree that interpretations of subsurface conditions by T&M and / or its subcontractors may be based on limited field observations including, without limitation, from widely spaced sampling



locations at the site of the Project. The Client acknowledges that site exploration by T&M and / or its subcontractors will only identify subsurface conditions at those points where subsurface tests are conducted or samples are taken. The Parties agree that T&M and / or its subcontractors may review field and laboratory data and then apply professional judgment to render an opinion about subsurface conditions at the site of the Project and that the actual subsurface conditions may differ, sometimes significantly, from those indicated by T&M and / or its subcontractors. The Client agrees that any report, conclusions or interpretations will not be construed as a warranty of the subsurface conditions by T&M and / or its subcontractors. The Parties further agree that no warranty or representation, express or implied, is included or intended in any reports, conclusions, or interpretations prepared by or on behalf of T&M pertaining to the site conditions.

- 9. UNANTICIPATED CONDITIONS.** If during the performance of T&M's services, any unanticipated conditions are observed, which in T&M's judgment may affect the Proposal / Scope of Services, T&M will notify the Client. The Client agrees that the discovery of such unanticipated conditions constitutes a significant change in the Proposal / Scope of Services. Based on T&M's evaluation of unanticipated conditions, T&M is authorized to take any of the following action: (a) Complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; or (b) Stop Work pending written agreement with the Client to modify the Scope of Services and Fees as required by the previously unanticipated conditions; or (c) Terminate the Services effective on the date specified by T&M in writing. The Client shall waive any claim against T&M and agrees to indemnify, defend and hold T&M harmless from any claim of liability for injury or loss arising from the encountering of unanticipated conditions.
- 10. HAZARDOUS CONDITIONS.** It is acknowledged by both parties that T&M's Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event T&M or any other party encounters asbestos or hazardous or toxic materials at the site of the Project, or should it become known in any way that such materials may be present at the site of the Project or any adjacent areas that may affect the performance of T&M Services, T&M may, at its sole option and without liability for consequential or any other damages, suspend performance of Services on the project until the Client takes steps to identify, abate and/or remove the asbestos or hazardous or toxic materials, and to warrant that the site of the Project is in full compliance with applicable laws. If, in T&M's sole opinion, site conditions represent a threat to the public health or an environmental hazard, T&M will so advise the Client so the Client may notify appropriate authorities. If the Client fails to act in a responsible manner, T&M may notify the appropriate authorities. The Client waives any claim against T&M and agrees to defend, indemnify and save T&M harmless from any claim or liability arising from the conditions or notifications of conditions at the site.
- 11. LSRP BACKGROUND.** The Site Remediation Reform Act (SRRRA) requires that a Licensed Site Remediation Professional (LSRP) oversees new N.J.D.E.P. Site contamination cases, as well as other environmental issues associated with environmental remediation and construction.
- 12. INFORMATION PROVIDED BY CLIENT.** Client shall provide to T&M all information known about the property / site as is reasonably known and available to the Client, either directly or indirectly, whether known by a representative of the Client or provided to the Client by a third party. Failure to provide such information to T&M relieves T&M of any liability.
- 13. NJDEP REPORTING REQUIREMENTS.** Client acknowledges that, under certain circumstances, T&M is legally obligated to notify the N.J.D.E.P. about conditions at the property / site as set forth in New Jersey laws, statutes or guidance and agrees not to hold T&M or the T&M employed LSRP or other T&M personnel liable for adhering to the reporting obligations and all other obligations mandated by New Jersey laws, statutes or guidance. In the event any condition is observed by the T&M employed LSRP that warrants



a notification to the NJDEP in accordance with N.J.A.C. 7:1E-5.3 and / or N.J.A.C.7:26E-1.4, T&M will notify the Client prior to notifying N.J.D.E.P.

- 14. CLIENT NOTICE TO THIRD PARTIES.** Client acknowledges that if he is not the property owner or person responsible for conducting remediation on the referenced property, that Client has notified the property owner or person / entity responsible for conducting remediation on the referenced property, and that the property owner or person / entity understands, acknowledges and approves of these reporting obligations by the T&M LSRP, as defined within the proposed Scope of Services. Client will provide written consent of the property / site owner for T&M to access the property / site and to provide the LSRP services proposed.
- 15. CLIENT DELAY OR TERMINATION OF REMEDIAL WORK.** Client acknowledges that SRRA imposes upon any person responsible for the remediation of a discharge an affirmative requirement to remediate a discharge and to meet regulatory and mandatory time frames. If, for whatever reason, the Client and / or party who is responsible for the remediation of a discharge at the property / site chooses to stop or delay the remedial work, this shall constitute a breach of the Contract and shall relieve T&M from any further obligation to continue work on the property / site, and relieve T&M and the T&M LSRP from any liability arising from the cessation of work. Furthermore, Client acknowledges that the T&M employed LSRP has an obligation to notify the N.J.D.E.P. that the Client has chosen to stop, delay or halt the remedial work and agrees not to hold T&M or the T&M employed LSRP or other T&M personnel liable for adhering to the reporting obligations and all other obligations mandated associated with LSRP program.
- 16. REMEDIAL FAILURE.** Client acknowledges that while the work performed by the T&M LSRP shall be performed in accordance with professional industry standards, T&M does not guarantee the long-term effectiveness of the remedial work. Remedy failure can be caused by factors other than negligence and remains the sole responsibility and legal obligation of the Client and not of T&M. Client agrees to release T&M from any liability arising from any future remedial failure.
- 17. DIRECT NJDEP CASE MANAGEMENT.** Client acknowledges that failure to strictly adhere to the requirements of the LSRP program can result in the N.J.D.E.P.'s decision to assign direct N.J.D.E.P. case management to the project, with N.J.D.E.P. "direct oversight" likely resulting in costly project delays and substantially increased costs to the Client.
- 18. NJDEP REQUIREMENTS FOR SPECIFIC END USERS.** Client acknowledges that the N.J.D.E.P. has established presumptive remedies for certain end uses, such as residential development, schools and childcare facilities which require strict adherence to N.J.D.E.P. requirements.
- 19. NJDEP AUDIT.** Client acknowledges that a Response Action Outcome (RAO) is subject to a three (3) year N.J.D.E.P. audit, during which time the N.J.D.E.P. may audit, modify or rescind the RAO if the remediation is deemed not to be protective of public health, safety and the environment. If the RAO is re-opened, invalidated, audited, modified or rescinded by the N.J.D.E.P., the Client acknowledges that the sole responsibility and legal obligation to take additional measures to remediate the property / site remains with the Client and not with T&M or the T&M employed LSRP.
- 20. CLIENT CONTINUING OBLIGATION UNDER NJDEP PERMIT PROGRAM.** Client acknowledges that if contamination is identified which will be left on-property / site under appropriate engineering controls and with the filing of the institutional controls, the engineering and institutional controls must be evaluated by the Client every two years under an N.J.D.E.P. permit program. Unless specifically included in this Work, T&M has no obligation to perform the evaluation or provide any notice to the Client that this reporting obligation is approaching.



**21. LSRP TERMINATION OF SERVICES.** Client acknowledges that the T&M employed LSRP may terminate services on this project for any reason and the LSRP's termination shall relieve T&M and the T&M employed LSRP from any further obligations or liability to continue work on the site. Client acknowledges that his failure to make payment in accordance with the compensation terms of the Contract shall constitute a breach of the Contract and shall relieve T&M from any further obligation or liability to continue work on the property / site.

**22. CLIENT EXECUTION OF NJDEP DOCUMENTS.** Client agrees to provide signatory for all documents and forms that are required to be submitted to the N.J.D.E.P. as part of the remedial activities, and that signatory will be the individual with the appropriate level of authority within Client's organization to sign these documents.

**23. FORCE MAJEURE.** T&M is not responsible for delays caused by factors beyond T&M's reasonable control, including, but not limited to, delays due to strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client or owner of the Project to furnish timely information or to provide review comments promptly; or delays caused by faulty performance by the Client, consultants or contractors at any level.

**24. CONSEQUENTIAL DAMAGES.** In no event shall T&M be liable in contract or tort or otherwise for any incidental, special, indirect or consequential damages, including loss caused by delay, commercial loss, or lost profits or revenues or opportunities resulting from any service furnished by T&M under this Agreement.

**25. INSURANCE.** T&M shall maintain for the term of this:

- Worker's Compensation and Employer's Liability insurance, statutory limits.
- Comprehensive General Liability insurance, a total of \$1,000,000 each occurrence and \$2,000,000 in aggregate.
- Comprehensive Automobile Liability insurance, a total of \$1,000,000 each occurrence and \$2,000,000 in aggregate.
- Professional Errors and Omissions insurance with a per claim limit of not less than \$3,000,000.

Certificates for all policies of insurance will be provided to the Client upon request.

**26. INDEMNIFICATION.** T&M agrees, subject to the provisions contained herein, to indemnify the Client, and the Client's officers, directors and employees, from and against any losses, damages and judgments arising from claims by third parties but only to the extent they are found to be caused solely by T&M's negligent acts, errors or omissions in the performance of professional services under this Agreement. **This indemnification provision is subject to and limited by the provisions agreed to by the Client and T&M in the "Limitations of Liability" section of these Standard Terms and Conditions.**

The Client agrees, subject to the provisions contained herein, to indemnify T&M, and T&M's officers, directors and employees, from and against any losses, damages and judgments caused by the Client's acts, errors or omissions and by any of Client's contractors, subcontractors or consultants or anyone for whom the Client is legally liable. T&M is not obligated to indemnify the Client for the Client's own negligence.

**27. LIMITATION OF LIABILITY.** The Client and T&M agree that T&M's total liability for any and all losses, judgments, injuries, claims, expenses and damages arising out of, resulting from or in any way relating to T&M's Services on this project, shall be limited to the total sum of \$50,000.00 or T&M's total fee for Services rendered on this Project, whichever is less. The Client hereby releases T&M from any



liability above such amount. The Client and T&M waive such claims and causes including, but are not limited to, negligence, professional errors or omissions, direct or indirect damages, delays, consequential damages, lost profits, strict liability, and breach of contract or breach of warranty. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination.

- 28. GOVERNING LAW.** The laws of the State within which the Project is located will govern the validity of this Agreement, its interpretation and performance.
- 29. INDEPENDENT CONTRACTOR.** Unless otherwise provided in our proposal, T&M is and shall be an independent contractor in the performance of Services covered by the Agreement, maintaining complete control of its employees and operations and neither T&M nor anyone employed by T&M shall be the agent, representative, employee or servant of the Client in the performance of the Services covered by this Agreement.
- 30. ASSIGNMENT.** Neither T&M nor the Client shall assign or transfer their interest in the Agreement without the written consent of the other Party. However, nothing contained in this paragraph shall prevent T&M from employing such consultants or subconsultants as T&M may deem appropriate. The covenants and agreements contained herein shall apply to and be binding upon the Parties hereto and upon their respective assigns and successors.
- 31. DISPUTE RESOLUTION.** Client and T&M agree that they shall submit any and all unsettled claims, counterclaims or other unresolved disputes between to non-binding mediation, where each Party shall pay its own costs and fifty percent (50%) of the mediator's fees. This provision shall not apply to fee collection lawsuits.
- 32. SEVERABILITY.** If any provision contained herein is held to be unenforceable by a court of law or equity, the Agreement shall be construed as if such provision did not exist and the unenforceability of such a provision shall not be held to render any other provision of the Agreement unenforceable.
- 33. SURVIVAL.** The express representations, indemnification and limitations of liability contained in this Agreement will survive the completion of all services of T&M under this Agreement or the termination of this Agreement for any reason.
- 34. ENTIRE AGREEMENT.** This Agreement (*consisting of (1) Proposal/Scope of Services and (2) Standard Terms & Conditions*) comprises the final and complete agreement between the Client and T&M. It supersedes all prior or contemporaneous communications or Agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each Party has read the document thoroughly, has had the opportunity to have questions explained by independent counsel and accepts the terms and conditions contained herein. Amendments to this Agreement shall not be binding unless made in writing and signed by both the Client and T&M. To the extent the Client provides its own agreement and that agreement is silent with respect to any term or condition expressed herein, these conditions shall prevail and shall be binding upon the Parties.