

USEPA BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT PROGRAM

ENVIRONMENTAL SERVICES AGREEMENT

THIS BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT PROGRAM ENVIRONMENTAL SERVICES AGREEMENT ("Agreement"), made and entered into this 5th day of July 2011 by and between Cuyahoga County, Ohio (the "County"), on behalf of the Department of Development ("DOD") and HZW ENVIRONMENTAL CONSULTANTS LLC ("Consultant"), a Limited Liability Corporation with principal offices located at 6105 Heisley Road Mentor, Ohio 44060 for services at the Triangle Stamping Redevelopment Site ("Facility"), comprised of two parcels located with an address of 2024 East 70th Street, Cleveland, Ohio 44103-4842.

WITNESSETH:

WHEREAS, the County currently manages and operates an environmental assessment program, known as the USEPA Brownfield Site Characterization and Assessment Program (the "Program");

WHEREAS, the purpose of the Program is to inventory, characterize, and assess sites throughout the County of Cuyahoga, Ohio, each of which constitutes a "brownfield site" (as such term is defined in Title II, Subtitle A, Section 201 of the Small Business Liability Relief and Brownfields Revitalization Act [the "Act"; Section 101 (39) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 ("CERCLA") {42 U.S.C. 9601 (39)}]), with respect to the environmental conditions which may be associated with such sites;

WHEREAS, pursuant to Title II, Subtitle A, Section 211 (b) of the Act (42 U.S.C. 9604 (k)), the County is the lead agency in the award of a Brownfields Hazardous/Petroleum Substances Assessment Cooperative Agreement Coalition grant by the USEPA ("Grant");

WHEREAS, the County is empowered to pay monies to the Consultant under Title II, Subtitle A, Section 211(b) of the Act (42 U.S.C. 9604 (b) (2));

WHEREAS, in order that the County may fulfill its responsibilities under the Grant in connection with the Program, the County requires the assistance of one or more environmental consultants;

WHEREAS, the initial site requiring the assistance of the Consultant has been identified and is more particularly described or shown on Exhibit A attached hereto and made a part hereof (the "Facility");

WHEREAS, the Consultant possesses the relevant professional experience, competence and knowledge, as required under the Act and any regulations promulgated thereunder, to render the services ("Services") provided for in this Agreement, and desires to render such Services to the County with respect to the Facility; and

WHEREAS, pursuant to §9.04 of the Ohio Revised Code, the Consultant has represented and the County has determined that the Consultant has no unresolved findings for recovery against it.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Consultant, agree as follows:

1. Purpose of Services. The Consultant acknowledges that the purposes of the Services to be provided pursuant to this Agreement shall include making all appropriate inquiry into the previous ownership, uses and environmental condition of the Facility in accordance with "generally accepted good commercial and customary standards and practices" (as defined under Title II, Subtitle A, Section 223 (2) (B) of the Act [42 U.S.C. 9601 (35)]) and as a consequence of such inquiry, to investigate, determine and analyze reasonably identifiable risks inherent in the existence of hazardous materials or wastes, petroleum products, toxic chemicals or substances, pollutants or contaminants, or any other material, chemical, waste, or substance, in any of their various forms ("hazardous substances"), which, in the judgment of the Consultant, reasonably exercised, could give rise to liability or responsibility under any federal, state or local laws, statutes, regulations, ordinances, protocols, guidance or standards or under common law ("environmental laws"), including without limitation, the presence of hazardous substances in the soil, groundwater, or air associated with the Facility.

2. Quality of Services. The Consultant shall provide and direct any and all qualified personnel necessary to perform the Services required pursuant to the express and implied terms and conditions of this Agreement, with a degree of skill, care and judgment normally exercised by recognized professional firms performing services of a similar nature in the State of Ohio.

3. Scope of Services. The Consultant will perform a preliminary environmental assessment of the Facility which is designed to assess the existence and nature of those conditions associated with the Facility which, in the judgment of the Consultant, reasonably exercised, violate or could give rise to liability or responsibility, or which may require remediation or response under environmental laws, including the identification of hazardous substances in the soil, groundwater or air on, over, above, or below the Facility, or any adjacent property ("adjacent property") in the vicinity of the Facility where there has been a release or suspected release of hazardous substances. The Consultant will attempt to determine the nature and extent of the use, storage or disposal of any hazardous substances on, under or about the Facility and any adjacent property and whether any hazardous substances have migrated to or from the Facility. For these purposes, the County authorizes and directs the Consultant to perform the preliminary environmental assessment of the Facility in accordance with the following designated protocol (*check appropriate box*):

ASTM E1527-05 "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process" meeting the requirements for "all appropriate inquiries" under the Act and any regulations promulgated thereunder, 40 C.F.R. Part 312;
or

(C) Ohio EPA Voluntary Action Program Phase I Property Assessment in accordance with Ohio Revised Code § 3746.04 (B)(3) and Ohio Administrative Code §3745-300-06, including a VAP Eligibility Analysis in accordance with Ohio Administrative Code §3745-300-02;

provided however, such preliminary assessment of the Facility shall meet and be performed in accordance with the criteria and requirements set forth in Title II, Subtitle A, Section 223 (2) (B) of the Act [42 U.S.C. 9601 (35)] or any current or proposed regulations promulgated thereunder.

The following descriptions shall serve as guidance for the Consultant in performing Services hereunder:

A. A review of all historical documents, records or other sources and information associated with the Facility and any adjacent property, including without limitation, chain of title documents, aerial photographs, building department records, land use records, plans, maps, surveys, historical city directories, insurance maps, and all reports, studies or any other information or correspondence relevant to the Facility which is readily available or reasonably obtainable by the Consultant, or is provided to the Consultant by the County, but in all events for a period of time at least as far back in the history of the Facility as it can be shown that the Facility contained structures or from the time the Facility was first used for residential, agricultural, commercial, industrial, or governmental purposes.

B. The examination of all relevant readily available or reasonably obtainable federal, state and local records or data bases of government records in an effort to determine whether those records identify known or suspected releases or any environmental impairments at the Facility or any adjacent property that has been placed upon a list of locations requiring remediation or investigation, including, without limitation, "contaminated sites" lists compiled under applicable environmental laws.

C. An evaluation and examination of all relevant readily available or reasonably obtainable federal, state and local records or data bases of government records, of the historic and current uses of the Facility and any adjacent property, incidents likely to cause or contribute to the release of hazardous substances, and the environmental condition of existing structures, including without limitation, records or databases of governmental records regarding the usage of hazardous substances on site, the presence or usage of above ground or underground storage tanks on site, solid waste management, methods of waste water handling or evidence of water or other wells and septic systems.

D. Interviews with past and present owners, operators and current or previous occupants of the Facility and any adjacent property, including persons having knowledge of the historic uses and waste handling activities associated with the Facility and any adjacent property.

E. Interviews with representatives of regulatory agencies having jurisdiction over the Facility, including representatives of the state environmental protection agency, division or bureau of underground storage tank regulation and local fire department.

F. At least one personal site inspection and tour of the Facility with particular emphasis on areas where hazardous substances may be or may have been used, stored, treated, handled, or disposed, including without limitation areas involving the presence or usage of above ground or underground storage tanks on site, the presence of obvious odors, pools of liquid, drums or unidentified containers, materials which may contain polychlorinated biphenyls ("PCBs"), drains, sumps, pits, stained pavement or soil, stressed vegetation, solid waste management, methods of waste water handling or evidence of water or other wells and septic systems. As a part of the site inspection and tour, the Consultant shall tour the surrounding area to determine if there are activities that could have an adverse environmental impact on the Facility. The inspection and tour shall identify all areas that the Consultant suspects contain hazardous substances. Physical limitations to the site inspection must be noted in the Consultant's report.

G. An examination of fireproofing, insulation, coatings, ceiling, flooring and other materials at the Facility to determine whether asbestos is present at the Facility with particular attention paid to textured ceiling or wall materials, sprayed-on fireproofing and pipe or boiler insulation. If the Consultant suspects that any materials associated with the Facility contains asbestos, the Consultant (*check appropriate box*): shall () obtain bulk or other samples of such materials, obtain a report from a certified laboratory indicating the presence and form of asbestos in the material, and note the location, extent, condition and friability of the material in the Consultant's report. In the event that asbestos or asbestos containing materials, operations or management practices, or existing conditions are determined or suspected by the Consultant to be in violation of environmental laws, including, in particular the National Emission Standards for Air Pollutants promulgated under the Clean Air Act, 42 U.S.C. §§7401 et. seq. or the regulations promulgated under the Occupational Safety and Health Act, 40 C.F.R. Parts 1910 and 1926, the Consultant will immediately notify the County.

H. An examination of the Facility and any pertinent governmental records, together with interviews of any apparently knowledgeable person to determine whether any underground storage tanks are or were present on the Facility. If the Consultant determines that any such tanks are present, then the Consultant shall verify that such tanks have been registered with the appropriate governmental authority and that any required testing and monitoring has been performed. The Consultant will examine any available testing and monitoring data to determine the condition of the tanks, contents of the tanks (if any), and whether the tank or tanks formerly associated with the Facility have leaked.

I. A determination as to whether there is constructed, placed, deposited, stored, disposed or located on the Facility any PCBs or transformers, capacitors, ballasts, or other equipment which contains dielectric fluid containing PCBs. The Consultant shall conduct or cause to be conducted a search of local utility records, including without limitation, a request for confirmation of the PCB content of any ground or full mounted electrical transformers on the Facility.

J. A determination of whether there is constructed, placed, deposited, stored, disposed or located on the Facility any insulating or other construction materials which contain and may emit formaldehyde into the ambient air.

K. An examination of all current and previously issued permits and licenses pertaining to the Facility to determine whether all permits and licenses required to be issued by any governmental authority on account of any or all of the activities associated with the Facility have been issued and are or were in full force and effect, and whether the Facility and the activities thereon are or were in full compliance with the terms and conditions of such permits and licenses. The Consultant will further examine the applications for any current permits and licenses to determine whether any of the facts and circumstances reported or assumed in the applications for or granting of such permits or licenses have materially changed.

The foregoing description of the scope of Services (sometimes hereinafter referred to as the "Phase I Services") to be provided by the Consultant is intended to serve as a minimum guideline, rather than to limit the Consultant's activity. Where additional Phase I Services are required in order to fulfill the purposes of the Services to be provided by the Consultant pursuant to this Agreement, it is understood that the Consultant will provide such Services, for the compensation and otherwise upon the terms, conditions and limitations contained herein. Notwithstanding anything contained in this paragraph 3, the County may reduce the scope of Services required hereunder by eliminating any one or more of items A through K by a written addendum to this Agreement.

4. **Phase II Services.** Consultant acknowledges that certain additional Services ("Phase II Services") may be requested during or following completion of the preliminary environmental assessment provided for herein under items A through K of paragraph 3. The applicable Phase II Services will include one or more of the Services indicated on the Services Selection List attached hereto and made a part hereof as Exhibit B (the "Checklist"). If one or more of the Phase II Services are requested, the Consultant shall submit a proposal to perform those Services, which proposal will, at a minimum, comply with the applicable protocol designated by the County on the Checklist furnished to the Consultant. The proposal shall fully describe the Services to be provided by the Consultant, and if approved, shall become the agreement between the County and the Consultant for the applicable Phase II Services; provided, however, the County reserves the right to furnish a specific form of agreement for the applicable Phase II Services. Approval of the proposal may be given only by the County Administrator or Deputy County Administrator, as evidenced by their written acceptance or execution of or written consent to the proposal or agreement. The terms and conditions of the agreement for the applicable Phase II Services shall be mutually agreed upon between the County and the Consultant; provided, however, Consultant acknowledges that its total compensation for Services, including Phase II Services, under this Agreement, shall in no event exceed *(insert not to exceed amount)* \$8,277.00 for the Facility.

In anticipation of a request for Phase II Services, Consultant represents that it has developed a generic Quality Assurance Project Plan ("QAPP") meeting the requirements in "Quality Assurance Guidance for Conducting Brownfields Site Assessment" (www.epa.gov/brownfields) and upon execution of this Agreement will submit its generic QAPP

to USEPA, Region V for approval. If approved, Consultant shall customize its generic QAPP to create a site-specific QAPP including a site-specific health and safety plan and sampling plan.

5. **Compensation.** In consideration of faithful performance of the Phase I Services, designated as Task 1, "Phase I ESA" in the Consultant's proposal attached hereto, the Consultant shall receive compensation in the amount of *(insert fixed fee amount for Phase I Services)* \$3,327.00 In addition, the Consultant shall receive compensation in the amount of *(insert fixed fee amount for a Generic QAPP)* \$ 0.00 for the creation of a Generic QAPP. The compensation for a Site-Specific QAPP shall be incorporated into the compensation for Phase II Services. The compensation for Phase II Services shall be incorporated by reference to this Agreement into, or be set forth in the proposal or agreement accepted, executed, or consented to by the County in accordance with paragraph 4 above, and, in either case, shall be computed for each quarter of an hour incurred in connection with the Phase II Services at the hourly rates set forth in Section I of the rate schedule ("Rate Schedule") entitled "Fees for Professional Services of the General Terms and Conditions," attached hereto (including all present, state, federal and local sales, use, excise, business and occupation and transportation taxes). With respect to any Phase II Services, the Consultant shall be entitled to its reimbursable expenses calculated as provided in Section II of the Rate Schedule. In the event that the Consultant encounters issues which would require additional time or expense, whether as a part of Phase I Services or Phase II Services, the Consultant shall immediately notify the County and shall not proceed until the Consultant has approval of the County to do so. Phase II Services, such as sub-surface investigation or other Services which may become necessary due to unforeseen circumstances shall only be performed by the Consultant upon prior written approval of the County, and at the rates set forth under Section I of the Rate Schedule plus reimbursable expenses calculated in accordance with Section II of the Rate Schedule.

6. **Time and Performance.** The Consultant will initiate the Services provided for herein within one week of receipt of a written authorization to proceed and will complete the Services and provide the County with a separate written report for the preliminary site assessment within

Eighty Eight days, (88 days) of the authorization to proceed. The Consultant shall assign the following personnel to perform the Services provided for in this Agreement and shall not remove or replace these individuals without the prior written approval of the County, which approval shall not be unreasonably denied or withheld, and the County's decision with respect to such removal or replacement shall be given in a timely manner :

The Consultant represents and warrants that the foregoing personnel, as listed on page 5 of the July 1, 2011 attached proposal, will be under the supervision or responsible charge of a person meeting the definition of environmental professional as defined in the Act and any current or proposed regulations thereunder. Notwithstanding anything contained herein to the contrary, this Agreement shall end and be of no further force and effect on and after September 30, 2011 unless extended by a written amendment executed by the Consultant and the County.

7. **Report.** The Consultant will prepare a draft report and submit the draft and all supporting information to the County for initial review. If requested to do so, such report and supporting information shall be submitted in electronic (e.g., Word or Adobe Acrobat) and non-electronic form to the County. The draft report for the Phase I Services will include the following sections: executive summary; nature and scope of Services performed; description of

searches, interviews and inspections completed; summary of data and information obtained; findings organized according to the scope of Services to be provided by the Consultant pursuant to paragraph 3; summary and detailed description of conclusions, and recommended actions. Once the County determines the draft is complete and the format is consistent with the format provided for herein, the final report will be submitted to the County for final review. The draft of the report for the Phase II Services shall be in a format as mutually agreed upon between the Consultant and the County.

8. **Termination.** Either the County or the Consultant may suspend the performance by the Consultant of all or any part of the Services to be provided under this Agreement or terminate all or any part of this Agreement, in either case, by written notice sent by certified mail, return receipt requested to a non-terminating party. Such suspension or termination shall be effective two (2) business days after receipt of the written notice. Both parties agree to meet on one occasion after such notice is given to discuss the reason for such suspension or termination. In the event of termination, the Consultant shall be entitled to compensation to the date of termination in accordance with Section I of the Rate Schedule, together with its reimbursable expenses calculated as provided in Section II of the Rate Schedule and shall submit a final invoice to the County within thirty (30) days after the effective date of such termination. Upon request by the County, the Consultant will promptly furnish the County with a written report based upon the data and information collected by the Consultant as of the date of termination of this Agreement, the cost of which shall be paid for in accordance with Section I of the Rate Schedule.

9. **Representations and Warranties.** The Consultant represents and warrants that:

A. The Consultant shall have obtained and shall maintain any and all licenses and permits required by environmental laws for the performance of its Services pursuant to this Agreement;

B. The Consultant shall comply with all applicable environmental laws in performing the Services hereunder, and shall comply with directives of governmental agencies and the County relating to safety, security, traffic or other like matters relating to the Facility; and

C. The Consultant's professional Services will be performed, its findings obtained and its recommendations prepared in accordance with generally and currently accepted scientific and engineering principles and practices and in accordance with industry standards of care exercised by recognized HzW Environmental Consultants LLC's performing Services in Ohio, as established at the time the Services hereunder are to be performed.

10. **Indemnity.** The Consultant shall defend, hold harmless and indemnify the County from and against all claims, actions, suits, liabilities, damages and expenses (including attorney's fees) for personal injury (including death), property damage or other claims and liabilities arising out of, related to, or in connection with the Consultant's Services pursuant to this Agreement, including any Services performed by any subcontractor or agent of the Consultant, excepting only such claims, actions, suits, liabilities, damages and expenses arising directly out of the County's willful misconduct.

11. **Insurance.** Consultant agrees to maintain at all times during the life of this Agreement worker's compensation, commercial general liability, comprehensive business automobile, professional liability (in particular covering errors and omissions), and umbrella liability insurances each in an amount not less than Two Million Dollars (\$2,000,000) (collectively the "Insurance Policies").

Each of the Insurance Policies shall state that the issuing company thereof shall have no right of recovery or subrogation against the County or its agents, directors, officers, employees, representatives or insurers, and that the County shall in no way be held responsible for the payment or satisfaction of any deductible thereunder.

Consultant shall name the County as an additional insured on each of the Insurance Policies, up to the amounts specified herein, and shall furnish the County with Certificates of Insurance stating to that effect.

Should any one of the Insurance Policies terminate or be cancelled, refused, or for any other reason no longer be of effect, the Consultant and Insurance Carrier shall immediately furnish written notice to the County of the fact. At such time such notice is received by the County, this Agreement shall be held null and void and no longer enforceable or of effect; provided, however, that if the Consultant is able to obtain coverage from another insurer within five (5) business days of the loss of coverage, this Agreement shall continue to be in full force and effect and shall remain binding on the parties hereto.

All Insurance Policies required hereunder shall cover and include the specific work contemplated by the terms hereof. If such policies do not cover such work, then Consultant shall not be in conformity with the terms hereof, unless Consultant obtains written permission from the County to not be in conformity with such terms.

12. **Independent Contractor.** The Consultant is acting and shall perform its Services under this Agreement as an independent contractor. Nothing contained in this Agreement or in the relationship between the County and the Consultant shall be deemed to constitute a partnership, joint venture, or any other relationship among them, and the Consultant's authority is strictly limited to performing the Services set forth herein in accordance with the terms and conditions hereof. The Consultant shall have no authority to execute any contracts, subcontracts or agreements for or on behalf of the County, nor to assume or create any obligation or liability or make any representation, covenant, agreement or warranty, express or implied, on the County or the County's behalf, or to bind the County in any manner whatsoever, without, in each case, written consent, approval, or instructions having been given or provided by the County. Any and all subcontracts shall be submitted to and approved by the County prior to execution and delivery.

13. **Audits.** The Consultant by his, her or its acceptance of the monies granted hereunder agrees to cooperate in all regards with any audit of the Grants and distributions therefrom, where such audit is performed by any governmental entity or agency duly authorized and empowered to undertake such audit by the Act, whether such entity or agency be from the County of Cuyahoga, State of Ohio or Federal Government (the "Auditor"). Consultant agrees to present information in such format as reasonably requested by the Auditor, and to comply in

all regards with all requirements and procedures as may be reasonably formulated by the Auditor from time to time.

14. **Assignment, Transfer or Delegation.** Neither this Agreement nor any of the rights, interests or obligations of the Consultant hereunder may be assigned, transferred or delegated in whole or in part by the Consultant without the prior written consent of the County, which consent may be denied, withheld or granted in the sole discretion of the County.

15. **Notices: Entire Agreement.** Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to the County or the Consultant, as the case may be, at the address set forth on the signature page of this Agreement or to such other address as the County or the Consultant may have designated in accordance herewith. The terms and conditions of this Agreement, including Exhibit A, Exhibit B, and the Rate Schedule attached hereto, constitute the final written expression of the agreement between the parties and are a complete and exclusive statement of the terms and conditions of this Agreement and may not be amended except in a writing signed by the parties hereto. Any amendments or modifications to this Agreement and any consents, approvals or instructions which may be required of the County under this Agreement may be given only by the County Administrator or Deputy Administrator. All other notices or other communications required or permitted hereunder may be given by an authorized representative of the County.

16. **Confidentiality.** The Consultant, its officers, agents and employees shall perform the Services in a discrete, confidential manner and shall not disclose any information or materials and reports gathered pursuant to this Agreement, or discuss such information or materials with anyone, other than authorized County representatives, without the prior written permission of the County; provided, however, that the Consultant is expressly authorized and permitted to disclose, where relevant, any such information or materials to any third parties who are required under the terms of this Agreement to be contacted by Consultant in connection with its Services hereunder or who may be entitled to such information as a matter of law or pursuant to court order. All such information, materials and reports shall belong to the County.

17. **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio.

18. **Force Majeure.** The time for performance or observance of any of the covenants and agreements to be performed or observed by Consultants under this Agreement shall be extended for delays caused by Force Majeure. For the purposes hereof, the term Force Majeure shall mean and include: (i) delays in the performance of the work by reasons for strikes, lockouts, accidents, acts of God or other causes beyond the Consultant's reasonable control, (ii) the failure by the County to furnish necessary information required under this Agreement, (iii) the failure by the County to approve or disapprove the Consultant's work as and when required under this Agreement, (iv) delays resulting from late, slow or faulty performance by the County, other contractors or consultants of the County, or by government agencies whose performance of work is precedent to or concurrent with the performance of the Consultant's work under this Agreement.

19. Disputes. Any dispute between Consultant and the County arising out of or relating to this Agreement, except for disputes relating to right of either party to terminate this Agreement in accordance with Article 8, shall be subject to mediation as an express condition precedent to the institution of any legal or equitable proceedings by either the Consultant or the County. The parties shall endeavor to resolve any such dispute through mediation conducted pursuant to the Construction Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party and with the American Arbitration Association. The prevailing party shall be entitled to reimbursement of the mediator's fee and the filing fees paid by such party. In addition, all costs and expenses incurred by either party in connection with the mediation shall be borne and paid by the unsuccessful party. The mediation shall be held in the County of Cuyahoga (in a place selected by County), unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

20. Electronic Documents By entering into this contract for environmental assessment services, I agree on behalf of the contracting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of July 5, 2011 which shall be deemed the effective date for all purposes of this Agreement.

HzW Environmental Consultants LLC
BY: 
BARBARA L. KNECHT

Cuyahoga County Executive

BY: 
Edward FitzGerald

EXHIBIT A
DESCRIPTION OF FACILITY

The Triangle Stamping Redevelopment Site ("Facility") Located on 0.50 acre comprised of 2 parcels in Strongsville, Ohio.

The property is currently owned by Triangle Stamping Company

118-14-024
118-14-025

The property is bordered by Carnegie Avenue to the South, 7000 Euclid Avenue property to the North and East 70th to the East.

EXHIBIT B
SERVICES SELECTION LIST

1. Ohio EPA Voluntary Action Program Phase II Property Assessment under O.R.C. 3746.04 (B)(4) and O.A.C. 3745-300-07
2. Site-specific Sampling and Analysis Plan meeting the requirements set forth in the generic Quality Assurance Project Plan, and under O.R.C. 3746.04(B)(4) and O.A.C. 3745-300-07 for VAP; and under 40 C.F.R. 31.45, and EPA DQO and QA/QC Guidance Documents for Non-VAP
3. Bureau of Underground Storage Tank Regulations Closure Assessment and/or 3-Tier Evaluation under O.A.C. 1301:7-19-12 and -13
4. Asbestos Survey under O.R.C. 3710 *et seq*; O.A.C 3745-20-02 – O.A.C. 3745-20-04; 40 C.F.R. 763.86 or equivalent; 40 C.F.R. 61 subpart M
5. Lead Paint Inspection (to determine the presence of lead-based paint) under O.R.C. 3742 *et seq*;
6. Risk Assessment and Report for Voluntary Action Program projects conducted in accordance with O.R.C. 3746 and O.A.C. 3745-300-08 (Generic) and/or O.A.C. 3745-300-09 (Site-Specific), or for leaking USTs regulated by BUSTR conducted in accordance with BUSTR's Site Feature Scoring System (Generic) or 4-Tier (Site-Specific) risk assessment documents.
7. Remedial Action Plan and Operation and Maintenance Plan (if necessary) under O.R.C. 3746 and O.A.C. 3745-300-15 for Voluntary Action Program projects, or O.A.C. 1301:7-9-13 for leaking USTs regulated by BUSTR.

GENERAL TERMS AND CONDITIONS

I. Fees for Professional Services

As noted on Page 5 in Attached Proposal dated July 1st, 2011.

All time including travel hours spent on the project by professional, technical, and clerical personnel will be invoiced. Unless otherwise stated, the foregoing rates shall apply to both Phase I Services and Phase II Services set forth in the Agreement to which these terms and conditions are attached, it being understood that, unless otherwise provided in the Agreement, the compensation payable to the Consultant is lesser of the actually incurred amount utilizing the foregoing rate schedule and the maximum amount set forth in the Agreement and that the Agreement does not provide for a fixed lump-sum price. If it is apparent that the maximum amount is insufficient to complete the project satisfactorily, the County will be advised as soon as practicable.

II. Reimbursable Expenses

The sum of \$8,277.00 for the scope of services set forth by HzW Environmental Consultants LLC in the July 1st, 2011 proposal document "Proposal to Provide Environmental Services at 2024 East 70th Street, Cleveland Cuyahoga County, Ohio" submitted by Barbara L. Knecht a of HzW Environmental Consultants LLC, to the County will be the maximum amount of compensation payable to the Consultant for expenses incurred.

III. Invoices and Payments

Consultant shall be paid monthly on the basis of invoices submitted. The invoices submitted will be for the portion of the agreed upon compensation earned by the Consultant during that month. Consultant shall be paid for all such invoices within thirty (30) days of submittal. In the event the County disputes any invoice or any portion thereof, the undisputed portion shall be paid to Consultant in accordance with the Agreement. Invoices not in dispute and unpaid after thirty (30) days shall accrue interest at the rate of one and on-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Payment shall be made to the Consultant, as follows: "HzW Environmental Consultants LLC 6105 Heisley Road, Mentor, Ohio 44060". Additional support documentation, if requested by the County shall be furnished at an additional administrative charge as required to compile the documentation.

IV. Insurance

The Consultant is covered by worker's compensation insurance, employers' liability insurance, commercial general liability insurance covering bodily injury (including death) and property damage, automobile liability insurance covering bodily injury (including death) and property damage, professional consultants liability insurance, and contractor's pollution legal liability insurance as follows:

Worker's Compensation	Minimum Statutory Amount
Employers' Liability Insurance	Minimum Statutory Amount
Commercial General Liability Insurance	\$ 2 million
Automobile Liability Insurance	\$ 2 million
Professional Errors and Omissions Liability Insurance	\$ 2 million
Contractors Pollution Legal Liability Insurance	\$2 million

Consultant shall deliver certificates evidencing such insurance coverage to the County before commencing work under this proposal. Each such policy shall provide that such coverage will not be changed or canceled without at least 30 days' prior written notice to the County.



**HzW ENVIRONMENTAL
CONSULTANTS LLC**

July 1, 2011

Ms. Janice Bayne, MBA
Senior Development Finance Analyst
Program Manager
Brownfield Assessment Grants
Cuyahoga County
Department of Development
Reserve Square
1701 East 12th Street, 1st Floor
Cleveland, Ohio 44114

Subject: *Proposal to Provide Environmental Services at 2024 East 70th Street, Cleveland, Cuyahoga County, Ohio*

Dear Ms. Bayne:

HzW Environmental Consultants, LLC ("HzW") is pleased to submit for your consideration this proposal to provide environmental services at 2024 East 70th Street, Cleveland, Cuyahoga County, Ohio (herein referred to as the "Property"). The Property is currently occupied by Triangle Stamping and is comprised of two (2) parcels, designated as Permanent Parcel Numbers (PPNs) 118-14-024 and 118-14-025 and consists of 0.50-acres. HzW proposes to provide these services to the Cuyahoga County Department of Development, herein referred to as "Client", in accordance with the provisions outlined below.

Task 1 – Phase I ESA

The Phase I ESA will be conducted in accordance with the American Society of Testing and Materials (ASTM) "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (referred to as "ASTM Practice E 1527-05") meeting the requirements for "all appropriate inquiries" under the Act and any regulations promulgated thereunder, 40 C.F.R. Part 312. The primary purpose of this Phase I ESA will be to identify, to the extent feasible, *recognized environmental conditions* in connection with the Property as this term is used and defined under ASTM Practice E 1527-05. In order to assist the Client in performing a Phase I ESA of the Property, in accordance with ASTM Practice E 1527-05, we will:

- A. Review information provided by the Client, as outlined in ASTM Practice E 1527-05, to aid in the identification of *recognized environmental conditions* in connection with the Property. This information includes but is not limited to title documentation, a records search for any environmental cleanup liens against the Property recorded under federal, tribal, state or local law must be noted, any Activity and Use Limitation (AUL) such as *engineering controls*, land use restrictions or *institutional controls* that are in place at the site and/or have been filed or recorded

in a registry under federal, tribal, state or local law must be noted, valuation reduction for environmental issues, owner/occupant issues and previous site assessment documentation. Failure to provide this information could result in a determination that "*all appropriate inquiry*" is not complete.

- B. Review *reasonably ascertainable* physical setting sources to obtain information related to general topographic, geologic, hydrogeologic and hydrologic conditions in the area of the Property. These sources may include but are not limited to USGS topographic maps, ground water maps, bedrock geology maps, surficial geology maps, hydrologic maps, soil survey maps and oil and gas wells maps.
- C. Review the most recent version of the required standard federal, state and tribal environmental record sources (for sites within the specified approximate minimum search distances) as required by ASTM Practice E 1527-05, to aid in the identification of *recognized environmental conditions* in connection with the Property. The required federal record sources include the Federal National Priorities Listing (NPL), the Federal Comprehensive Environmental Response and Liability Information System (CERCLIS) list, the CERCLIS No Further Remedial Action Planned (NFRAP Archive) sites list, the Federal Resource Conservation and Recovery Act (RCRA) Corrective Action Site Lists (CORRACTS), the Federal RCRA non-CORRACTS transfer, storage, and disposal (TSD) facilities list, the Federal RCRA generators list, and the Federal Emergency Response Notification System (ERNS) list. The required state and tribal record sources include the OEPA's Master Sites List (MSL)/Division of Emergency and Remedial Response (DERR) database, equivalent of NPL, equivalent of CERCLIS, Voluntary Cleanup Sites, Brownfield Sites, state landfill/solid waste disposal site list, BUSTR's leaking underground storage tank list (LUST) and BUSTR's registered underground storage tank list (RUST).
- D. Review required *reasonably ascertainable* standard historical sources to develop a history of the previous uses of the Property and surrounding area, in order to help identify the likelihood of past uses having led to *recognized environmental conditions* in connection with the Property. Historical resources will be reviewed to determine the Property's first developed use or history dated back to 1940, whichever is earlier. The standard historical sources required by ASTM Practice E 1527-05 include recorded land title records (as provided by the Client), property tax files, insurance maps, aerial photographs, street directories, topographic maps, building department records, Department of Health/Environmental Division records, fire department records, local/regional pollution control agency and/or water quality control agency and zoning/land use records. Any data gaps and/or data failures encountered as part of the Phase I ESA will be clearly identified in the final report.
- E. Perform a site reconnaissance of the Property to obtain information indicating the likelihood of identifying *recognized environmental conditions* in connection with the Property. The site reconnaissance will involve a visual and physical observation of the Property and any structure(s) located on the Property to the extent not obscured by bodies of water, adjacent buildings or other obstacles. The site reconnaissance will consist of an evaluation of the following to the extent visually and/or physically observed:

- Current and past use(s) of the Property
- Current and past use(s) of adjoining properties
- General geologic, hydrogeologic, hydrologic and topographic conditions of the Property and surrounding area
- General description of structures or other improvements on the Property
- Means of heating and cooling of the buildings on the Property
- Location of adjoining public thoroughfares and any roads, streets and/or parking facilities on the Property
- Hazardous substances and petroleum products containers/storage
- Aboveground storage tanks and/or underground storage tanks
- Electrical or hydraulic equipment known to contain PCBs or likely to contain PCBs
- Engineering controls or physical modifications
- Strong, pungent or noxious odors
- Floor drains, sumps, stains, corrosion, stressed vegetation
- Pits, ponds, lagoons, pools of liquid
- Solid waste and waste water
- Irrigation wells, injection wells, abandoned wells, oil/gas wells or other wells and septic systems or cesspools.

F. Conduct interviews with owners, occupants and local government officials to obtain information relative to *recognized environmental conditions* in connection with the Property.

G. Contract with AccuSearch of Waite Hill, Ohio, to conduct an environmental lien and activity use limitations search for the Property. The environmental lien and activity and use limitations search evaluates deeds, easements, environmental liens or deed restrictions that have been recorded in association with the Property.

Using the information collected in Subtasks A through G above, HzW will prepare a report which presents a summary of the data collected during the Phase I Environmental Site Assessment. This report will document current site conditions and findings, and present information of the historical land use of the Property. This report will be supplemented by a photographic log, supporting documentation and mapping resources, and will identify any areas that may require additional investigation. A draft copy of the Phase I ESA report will be issued to the Client for review and comment prior to finalizing. Upon receipt of comments from the Client, HzW will prepare the final Phase I ESA report and provide the Client with one (1) hard copy and one (1) copy in electronic format (Adobe Acrobat) burned on a compact disc.

Ms. Janise Bayne, MBA

July 1, 2011

Page 4

In addition to the standard ASTM scope, the following non-scope considerations may present a Business Environmental Risk (BER) in association with the Property and are, therefore, presented for consideration:

Radon	Endangered Species
Lead-Based Paint	High Voltage Power Lines
Lead in Drinking Water	Ecological Resources
Regulatory Compliance	Cultural and Historic Resources
Industrial Hygiene	Indoor Air Quality
Wetlands	Health and Safety

Should the Client wish to include any of the above listed non-scope considerations as part of the Phase I ESA of the Property, HzW will submit a revised scope and fee. Additionally, it should be noted that this proposal does not include an inspection for toxic molds as part of the assessment activities. A revised scope and fee would also be required should the Client wish to include a mold inspection as part of the Phase I ESA.

This Scope of Services assumes that the Property will not be entered into Ohio EPA's Voluntary Action Program (VAP) or require issuance of a No Further Action letter in accordance with Chapter 3745-4.50 of the Ohio Administrative Code. Should the Client intend to pursue a No Further Action letter under the VAP, or if the Client intends to have VAP standards utilized, HzW must be notified prior to project authorization, and a revised Scope of Services and adjusted fee will be submitted to the Client.

Task 2 - Asbestos Survey

In order to assist the Client in identifying asbestos-containing building materials located at the building on the Property (herein referred to as the "subject building"), HzW will provide an Asbestos Hazard Evaluation Specialist, who is certified by the State of Ohio, in accordance with the Ohio Department of Health regulations, to conduct an asbestos survey. This survey will consist of the following elements:

- A. Reviewing available record drawings, surveys, and previous abatement projects to determine the bulk sampling strategy.
- B. Conducting a physical inspection of the subject building to identify the location, quantities, and condition of building materials suspected of containing asbestos.

It should be noted that parts associated with active process equipment, that have the potential to contain asbestos, will not be sampled as part of this Scope of Work. In addition, tar-based roofing materials (built-up decking and flashing) in good condition will not be sampled and, therefore, will be assumed to contain asbestos.

- C. Collecting bulk samples of any building materials suspected of containing asbestos and submitting these samples to an independent laboratory accredited under the National Institute of Standard and Technology (NIST) National Voluntary Accredited Laboratory Program (NVLAP) for confirmation of asbestos content.

Ms Janice Bayne, MBA

July 1, 2011

Page 5

D. Upon receipt of the analytical results, HzW will prepare a letter report that presents the findings of the asbestos survey conducted at the subject building and any associated recommendations. The Client will be provided with one (1) hard copy and one (1) copy in electronic format (Adobe Acrobat) burned on a compact disk

FEE AND BILLING

HzW will accomplish the work outlined in Tasks 1 and 2 for the fees presented below.

Task 1 - Phase I ESA

HzW Labor	Lump Sum Fee:	\$2,817.00
EDR Database Review	Lump Sum Fee:	\$ 210.00
Environmental Lien and Activity and Use Limitations Search	Lump Sum Fee:	\$ 300.00
Task 1 Total		\$3,327.00

Task 2 - Asbestos Survey

HzW Labor	Lump Sum Fee:	\$2,100.00
Analytical @ \$10.00/sample/layer	Not to Exceed	<u>\$2,850.00*</u>
(Based on an estimated 95 samples being collected with up to 3 layers per sample and normal laboratory turnaround times [5 to 7 days from laboratory receiving the samples]).		
Task 2 Total		\$4,950.00

TOTAL PROJECT COST: **\$8,277.00**

Billing for this project will be submitted to the Client upon completion of the work. Invoices are due and payable twenty-five (25) days following receipt. A list of all HzW personnel who will or may be assigned to perform the services presented in this proposal, which includes title, responsibilities and hourly rates, is presented below. A completed DBE Subcontractor Utilization Form (EPA Form 6100-4) is included as Attachment 1 of this proposal.

<u>Name</u>	<u>Title</u>	<u>Responsibilities</u>	<u>Hourly Rate</u>
Matt Knecht	President	Environmental Professional	\$175.00/hour
Joan Sablar	Project Manager	Oversight/Management	\$150.00/hour
Rebecca Florjancic	Environmental Scientist III	Oversight/Management	\$95.00/hour
Matthew Fergus	Field Technician Supervisor	Field Work/Report Prep	\$95.00/hour
Kattie Eivilsizer	Environmental Scientist	Field Work/Report Prep	\$72.50/hour
Mark Lendvay	CAD Technician	Computer Aided Drafting	\$67.50/hour
Carmen Rocco	Field Technician	Field Work	\$65.00/hour
JoMarie Sherman	Technical Editor	Report Review	\$100.00/hour

Ms. Janice Bayne, MBA
July 1, 2011
Page 6

CLOSURE

In addition to the matters set forth herein, our agreement shall include and be subject to the revised Standard Provisions attached hereto (Attachment 2) and hereby incorporated herein. The term "the Client" as used in the Standard Provisions shall be understood to refer to Cuyahoga County, Department of Development. The Standard Provisions shall apply to this agreement, regardless of the method of authorization.

We hope that this proposal is acceptable to the County. Please call us should you have any questions. We look forward to working with you on this project.

H2W ENVIRONMENTAL CONSULTANTS, LLC



Barbara L. Knecht, CHMM
Chief Executive Officer

RLF:JAS/jb

Attachments: DBE Subcontractor Utilization Form (EPA Form 6100-4)
Standard Provisions
I:\Pro11\Phase I ESA\Cuyahoga County\Triangle Stamping\Triangle Stamping Pro.doc

ATTACHMENT 1
DBE SUBCONTRACTOR UTILIZATION FORM



Environmental
Protection Agency

OMB Control No: _____
Approved: _____
Approval Expires: _____

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

BID/PROPOSAL NO.	PROJECT NAME Triangle Stamping, 2024 E. 7th St., Cleveland, Ohio		
NAME OF PRIME BIDDER/PROPOSER HzW Environmental Consultants, LLC	E-MAIL ADDRESS rflorjancic@hzwenv.com		
ADDRESS 6105 Heisley Road, Mentor, Ohio 44060			
TELEPHONE NO. 440-357-1260	FAX NO. 440-357-1510		

The following subcontractors¹ will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATE D DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?
Environmental Data Resources, Inc 440 Wheelers Farms Road Milford, CT 06461 Toll Free: 800 352.0050	Environmental database search	\$210.00	No
AccuSearch 7490 Eagle Road Watt Hill, Ohio 44094 440-256-2400	Environmental Liens and Activity and Use Limitations search	\$300.00	No

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c)

Rebecca Florjancic
Signature Of Prime Contractor

04/12/2011

Date

Rebecca Florjancic

Phase I Manager

Print Name

Title

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
Protection Agency

OMB Control No: _____
Approved: _____
Approval Expires: _____

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

BID/PROPOSAL NO.	PROJECT NAME Triangle Stamping, 2024 E. 7th St., Cleveland, Ohio		
NAME OF PRIME BIDDER/PROPOSER H2W Environmental Consultants LLC	E-MAIL ADDRESS rflorjancic@h2wenv.com		
ADDRESS 6105 Heisley Road, Mentor, Ohio 44060			
TELEPHONE NO. 440-357-1260	FAX NO. 440-357-1510		

The following subcontractors¹ will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?
IATL 9000 Commerce Parkway, Suite B Mt. Laurel, New Jersey 08054 (856) 231-9449	Analytical Laboratory-Asbestos	\$2,850.00	No

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c)


Signature Of Prime Contractor

04/12/2011

Date

Rebecca Florjancic
Print Name

Phase I Manager
Title

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
Protection Agency

OMB Control No: _____
Approved: _____
Approval Expires: _____

**Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form**

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Utilization Form to this address.

ATTACHMENT 2
STANDARD PROVISIONS

1. Information Provided by Others. Client shall provide to HzW Environmental Consultants, LLC, ("Consultant") all pertinent background information related to the project. The sources of any such information may include, but are not limited to, Client. Client recognizes that it is impossible for Consultant to assure the sufficiency or accuracy of such information, either because it is impossible to do so, or because of errors or omissions by others which may have occurred in assembling the information. Accordingly, Consultant may rely on all information provided to it, and Client waives any claim against Consultant, and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss arising, or allegedly arising, from errors, omissions, or inaccuracies in documents or other information provided to Consultant by sources which may include, but are not limited to, Client, and agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of, or otherwise regarding, any such claim.

2. Right of Entry. Client shall provide or assist Consultant in gaining the right to enter property owned by Client and/or other(s) in order for Consultant to fulfill the scope of services included hereunder.

3. Notification of Hazardous Materials. When wastes, materials and/or substances or other materials or substances hazardous and/or toxic to human health or to the environment, whether regulated or unregulated, ("Hazardous Materials") are known, assumed or suspected to exist at a site, Consultant is required to take appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations, and to follow procedures that Consultant deems prudent to minimize risks to its employees and the public. Should Client know or have any reason to assume or suspect that Hazardous Materials exist at the project site, Client will inform Consultant prior to project initiation, and advise Consultant of such known or suspected Hazardous Materials' type, quantity, and/or location.

4. Hazardous Materials. It is understood and agreed that in seeking the professional services of Consultant under this Agreement, Client may request Consultant to undertake obligations involving or related to Hazardous Materials (including, but not limited to, asbestos). Such services shall be performed in accordance with generally accepted professional practice at the time when and the place where the services are rendered. Client agrees to hold harmless, indemnify, and defend Consultant from and against any and all claims, losses, damages, liabilities, and costs arising, or allegedly arising, out of or in any way connected with the presence, discharge, release, or escape of contaminants or Hazardous Materials of any kind, or environmental liability of any nature or in any manner related to services performed by Consultant under this Agreement, including the failure to discover any Hazardous Materials which exist in, on, above, beneath, about, or which have migrated onto, or under, the project site. Such indemnification shall not apply to claims, damages, losses, or expenses which are finally determined to result from willful or reckless disregard by Consultant of its obligations under this Agreement.

5. Scope of Services.

a. In the event that the Scope of Services for this Agreement was developed by Consultant, Client acknowledges that it was prepared at Client's direction and without input from Client and/or other professionals retained (directly or indirectly) by Client. Client further acknowledges that, as a result, Consultant has been required to make various assumptions about Client's needs and preferences, as well as Client's ability to obtain certain services from other sources. Accordingly, Client waives any claim against Consultant, and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss arising, or allegedly arising, from the assumptions made by Consultant in developing the Scope of Services and agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such assumption in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

b. In the event that the scope of services for this project was developed by a party other than Consultant, Consultant makes no claims as to its adequacy, since Consultant was not involved in or privy to the information and considerations that it reflects. Accordingly, Client acknowledges that Consultant is forced to assume that the scope of services is fully adequate for Client's purposes. Client also acknowledges and understands that Consultant assumes that Client has an alternative source from which to obtain any needed or desired services not listed. Accordingly, Client waives any claim against Consultant, and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss arising, or allegedly arising, from Consultant's failure to perform services limited by or not included in the scope of services, and agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

6. Disturbance of Property/Adverse Property Conditions. Client understands that use of sampling equipment may cause some disturbance to the property, the correction of which is not part of this Agreement. Client also understands that the discovery of certain conditions and/or taking preventive measures relative to these conditions may affect a property's value. Accordingly, Client waives any claim against Consultant, and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss arising, or allegedly arising, from said conditions, and agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

7. Limiting Conditions: Certain conditions may be encountered in the field which limit the Consultant's ability to complete all or part of the Scope of Services. These may include (but are not limited to) locks on gates, doors, or fences; flooded basements; immovable equipment or machinery; structurally unsound buildings, walkways, "cat walks", etc.; snow cover; debris/fill piles; or active game hunting in the immediate area where the Consultant is to implement the Scope of Services. In the event of a limiting condition, the Consultant will endeavor to contact the Client as soon as practical to advise of the limiting condition, and request direction on how to complete the Scope of Services, given the limiting condition. Should the Client direct the Consultant to return to the site once the limiting condition has been removed or otherwise abated, such a re-inspection of the work site by the Consultant may be considered an Additional Service, and subject to additional compensation above that contemplated in the original agreement. Should the Client direct the Consultant to disregard the limiting condition, the Client will waive any claim against Consultant, and agree to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss arising, or allegedly arising, from said conditions, and agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

8. Job Site Safety. Consultant is responsible for its own employee's activities on the job site. Neither this Agreement, nor the professional activities of Consultant, nor the presence of Consultant or its employees and/or subcontractors shall be construed to imply Consultant has responsibility for the methods of work performance, superintendence, sequencing of construction, or safety of others in, on, or about the job site.

9. Opinions of Cost. Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to the costs of services, construction or materials shall be made on the basis of its experience and qualifications and represent its best judgment; however, Consultant cannot and does not guarantee that bids or actual costs will not vary from opinions of probable cost.

10. Graphic Presentation of Physical Features. Any graphic presentation of physical features on maps or in reports is based upon field measurement techniques (such as compass or distance triangulation, pace-and-compass traverses, etc.) using available physical landmarks, and will be considered approximate unless indicated otherwise.

11. Reuse and/or Revision of Documents. All documents prepared by Consultant pursuant to this Agreement are related exclusively to the services described herein. They are not intended or represented to be suitable for reuse by Client or others on extensions of this project or on any other project. Any reuse without written verification or adaptation by Consultant for the specific purposes intended will be at Client's sole risk and without liability or legal exposure to Consultant; and Client shall indemnify and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising, or allegedly arising, out of or resulting therefrom. Any revision, verification or adaptation after Consultant's submission of its final work-product to Client will entitle Consultant to further compensation in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

12. Standard of Care. In performing its professional services hereunder, Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by members of its profession practicing at the same time in the same or similar locality. No other warranty, express or implied, is made or intended by Consultant's undertaking herein or its performance of services hereunder.

13. Maintenance of Professional Standards and Ethics. Client acknowledges that Consultant's services in all cases must be rendered in accordance with prevailing professional standards and ethics, as well as certain laws or regulations that apply to Consultant. Client further acknowledges that the responsibility for making reports or disclosures to any governmental agency or third party is solely that of the Client and/or the owner of the property that is the subject of the services, unless otherwise required by prevailing legal or professional standards.

14. Notice of Deficiency. Client, Client's personnel, contractors and subcontractors shall promptly notify Consultant of any deficiency or suspected deficiency in Consultant's work, in order that Consultant may take prompt, effective measures to address any perceived deficiencies.

15. Invoices. Invoices will be submitted by Consultant to Client monthly for services performed and expenses incurred pursuant to this Agreement. Client recognizes that time is of the essence with respect to payment of Consultant's invoices and that timely payment is a material part of the consideration of this Agreement. Payment of each such invoice will be due within twenty-five (25) days. A service charge will be added to delinquent accounts at the maximum rate allowed by law for each month of delinquency.

16. Non-Contingency. Client acknowledges and agrees that the payment for services rendered and expenses incurred by Consultant pursuant to this Agreement is not subject to any contingency unless expressly set forth in writing in this Agreement.

17. Failure to Pay. If Client fails to make any payment due Consultant for services and expenses within sixty (60) days after Consultant's transmittal of its invoice therefor, Consultant may, after giving seven (7) days' advance written notice to Client, suspend services under this Agreement until it receives payment in full for all amounts due. Consultant may also initiate legal proceedings to collect. In cases where the Consultant has issued reports and/or letters of reliance, Consultant may also notify the Client and any other party to which these reports and/or letters of reliance were issued of the Consultant's withdrawal of reliance upon the information contained therein, and request return of all written reports, data, and other information as the rightful property of the Consultant, based upon the Client's failure to pay. In the case of such a request, the Client agrees to return of all documents and/or letters of reliance, and provide written notification to any party to which Consultant's reports or data were disseminated, notifying them of the Consultant's withdrawal of reliance. In addition to all amounts due and payable pursuant to Consultant's invoices, Consultant may collect accrued interest and its reasonable attorneys' fees and other expenses related to the collection proceeding. Such expenses shall include, but shall not be limited to, the cost of the time devoted by Consultant's officers, directors, employees, and agents devoted to such proceeding and Consultant's related expenses, determined in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

18. Compensation for Additional Services. The undertaking of Consultant to perform professional services under this Agreement extends only to those services specifically described herein. If Client and Consultant agree that Consultant shall perform additional services ("Additional Services") hereunder, Client shall pay Consultant for the performance of such Additional Services (in addition to all other amounts payable under this Agreement) in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

19. Changed Conditions. In the event of an occurrence or discovery that was not originally contemplated by or known to Consultant in developing the original scope of services and fees, Consultant, in its sole discretion, may request modification of this Agreement. In the event of such a request, Consultant shall identify to Client the change in conditions which, in Consultant's judgment, make such modification necessary. If a modified Agreement or specific Additional Services cannot be agreed to, this Agreement may be terminated.

20. Changed Costs. Consultant shall have the right to increase the compensation payable by Client to Consultant for any non-lump sum project in the event that performance of this Agreement extends beyond March 1 (the date on which Consultant annually revises its fee and reimbursement schedule) of any calendar year and/or in the event that Consultant must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement.

21. Indemnification by Consultant. Consultant is protected by Workmen's Compensation Insurance and other insurance, and will furnish certificates of insurance upon request. Consultant agrees to hold Client harmless from loss, damage, injury, or liability arising, or allegedly arising, directly from the negligent acts or omissions of Consultant, its employees, agents, subcontractors and their employees and agents to the extent that the same is actually covered and paid under the foregoing policies of insurance.

22. Limitation of Liability. To the fullest extent permitted by law, Client will limit any and all liabilities, claims for damages, costs of defense, and/or expenses to be levied against Consultant (whether by Client or by any other person or entity) on account of any and all defects, errors, omissions, negligence and other claims and liabilities to the amount actually paid in compensation to Consultant or paid under said insurance policies, whichever is greater. Client shall defend, indemnify and hold Consultant harmless from any claim or liability in excess of this amount. Further, Client agrees to notify any contractor or subcontractor who may perform work in connection with any design, report, or study prepared by Consultant of such limitation on, and indemnification for, claims and liabilities, and require as a condition precedent to its performance of such work an identical limitation on, and indemnification for, claims and liabilities on its part as against Consultant. In the event Client fails to obtain an identical limitation and indemnification provision, Client shall indemnify and hold Consultant harmless for any claims and liabilities in such a manner and to such extent that the aggregate liability of Consultant shall not exceed the aforementioned amount.

23. Environmental Indemnity. To the fullest extent permitted by law, Client agrees to indemnify, defend and hold harmless Consultant and its subcontractors, consultants, agents, officers, directors and employees of any of them from and against all claims, liabilities, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from any release or threatened release of Hazardous Materials that existed at the project site, prior to or after the commencement of Consultant's work, provided that such release or threatened release is not finally determined to have resulted from the sole negligence of Consultant. Without limiting the generality of the foregoing, the above indemnification extends to claims resulting from:

- a. Client's violation or alleged violation of any federal, state or local statute, regulation or ordinance relating to the disposal of Hazardous Materials;
- b. Client's or Consultant's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of Hazardous Materials found or identified at the site;
- c. Hazardous Materials introduced at the site by Client or third persons before or after the completion of services herein;
- d. Allegations that Consultant is a generator, operator, treator, storer, transporter, arranger for transport, handler, or disposer under RCRA, the Comprehensive Environmental, Response, Compensation and Liability Act ("CERCLA") or any other federal, state or local law, regulation or ordinance.

24. Consequential Damages. Client shall not be liable to Consultant and Consultant shall not be liable to Client for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by Client or Consultant, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

25. Delays. Consultant's field or technical work may be interrupted due to causes beyond its control. Client shall not hold Consultant responsible for damages or delays in performance caused by acts of God or other circumstances. For purposes of this Agreement, acts of God and other circumstances beyond the control of Consultant include, but are not limited to, unusual weather; floods; epidemics; war; riots; strikes; lockouts or other industrial disturbances; protest demonstrations; unanticipated site conditions; denial of, or impediment to, site access; insufficient or incomplete delivery of information requested from Client, regulatory agencies, or third parties; or inability, despite reasonable diligence, to obtain personnel, equipment or material for the project.

26. Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of changed conditions or the substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of termination by either party, Consultant will be paid for all services rendered to the date of termination, all expenses subject to reimbursement hereunder, and other reasonable expenses incurred by Consultant as a result of such termination. In the event Consultant's compensation under this Agreement is a fixed fee, upon such termination the amount payable to Consultant for services rendered will be determined using a proportional amount of the total fee based on a ratio of the amount of the work done, as reasonably determined by Consultant, to the total amount of work which was to have been performed, less prior partial payments, if any, which have been made.

27. Confidentiality. Consultant agrees to keep confidential and not to disclose to any person or entity, other than Consultant's employees and subcontractors, without the prior consent of Client, all data and information which are furnished to Consultant by Client and which are marked CONFIDENTIAL; provided, however, that this provision shall not apply to data which are in the public domain, or were generated by or previously known to Consultant, or which were acquired by Consultant independently from third parties which have no obligation to Client to keep said data and information confidential. These provisions shall likewise not apply to information, in whatever form, that comes into the public domain through no fault of Consultant. Nor shall these provisions restrict Consultant from disclosing any information or data when ordered by a court, administrative agency or other authority with apparent jurisdiction. Consultant may use Client's name and a general description of Consultant's services for Client for marketing purposes.

28. **Binding Effect.** This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

29. **Third-Party Exclusion.** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party. Client agrees that Client shall not disclose to any third party any data, reports or other information furnished by Consultant to Client under this Agreement without the prior written consent of Consultant, and in the absence of such consent, Consultant shall have no liability to Client for claims resulting from such disclosure. Client further agrees to indemnify, defend and hold Consultant harmless from any claim or liability for injury or loss arising, or allegedly arising, from Client's disclosure to a third party, and/or a third party's use of, any data, reports or other information furnished by Consultant.

30. **Controlling Law.** This Agreement shall be governed by the law of the State of Ohio without regard to its conflict of laws procedures.

31. **Location of Litigation.** In the event that Client wishes to commence litigation against Consultant, Client agrees that it may bring such litigation only in the Court of Common Pleas for Lake County, Ohio or in the U.S. District Court for the Northern District of Ohio, Eastern Division or such other courts which include Lake County, Ohio within their territorial jurisdictions.

32. **Expenses of Litigation.** In the event litigation in any way related to the services performed hereunder is initiated against Consultant by Client, its contractors, or subcontractors, and such litigation concludes with the entry of a final judgment favorable to Consultant, Client shall reimburse Consultant for all of its attorneys' fees and other expenses related to said litigation. Such expenses shall include, but shall not be limited to, the cost to Consultant for any time spent and expenses incurred, in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

33. **Alternative Dispute Resolution.** In the event of a dispute between Consultant and Client which is not resolved in good faith negotiation, Client agrees to negotiate in good faith to find or craft an alternative dispute resolution mechanism.

34. **Time Limit for Claims.** Client agrees that it will not pursue claims against Consultant more than two (2) years after Consultant's performance of the work from which the claim arises or to which it relates.

35. **Extension of Protections.** Client agrees to extend any and all limitations, indemnifications and waivers provided by Client to Consultant to those individuals and organizations Consultant retains for proper execution of the work. These include, but are not limited to, Consultant's officers, directors, and employees and their heirs and assigns, as well as Consultant's agents, subconsultants and subcontractors and their officers, directors, employees, and their heirs and assigns.

36. **Instruments of Service.** All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by Consultant are copyrighted instruments of service. In the case of a failure to pay the Consultant by the Client, all such instruments of service will be considered the rightful property of the Consultant, not the Client, and returned to the Consultant in accordance with the Failure to Pay paragraph of these provisions. These instruments of service will be retained by Consultant for a period of ten (10) years following completion of the work, during which time they will be made available to Client, upon prior request, for review at reasonable times. Further, the contents of this proposal may not, for any purpose, be copied, or be provided or otherwise communicated, in whole or in part, to any party other than Client or Client's legal counsel.

37. **Photographs.** Photographs of any completed project embodying the services of Consultant provided hereunder may be made by Consultant and shall be considered as its property and may be used by it for publication, marketing or other promotional purposes.

38. **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provision hereof. If any provision of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

39. **Survival.** The above terms and conditions regarding limitation of liability and indemnification shall survive the completion of the services under this Agreement and the termination of this Contract for any cause.

40. **Titles.** The titles used in this Agreement are for general reference only and are not part of the Agreement.

41. **Merger.** This Agreement constitutes the entire Agreement between Consultant and Client, and all negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both Consultant and Client.

Initial by Client: _____

Initial by Consultant: 