

MEETING DATE: October 25, 2018

TITLE: Authorization to execute a contract with Wenck Associates for continued environmental investigation at 325 Blake Road

RESOLUTION NUMBER: 18-113

PREPARED BY: Michael Hayman

E-MAIL: mhayman@minnehahacreek.org

TELEPHONE: 952-471-8226

REVIEWED BY: Administrator Counsel Program Mgr. (Name):
 Board Committee Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date):_____	<input type="checkbox"/> Refer to taskforce or committee (date):_____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): <u>Requesting approval on October 25, 2018</u>	

PURPOSE or ACTION REQUESTED:

Authorization to execute a contract with Wenck Associates for continued environmental investigation and reporting at 325 Blake Road for locations previously inaccessible due to the presence of the industrial facility. The focus of this approval is related to the recently awarded Hennepin County Environmental Response Fund (ERF) award of \$25,000. All additional work was previously approved for contract with the Hennepin County Closeout of Assistance (COA) program.

PROJECT/PROGRAM LOCATION:

325 Blake Road North, Hopkins MN

PROJECT TIMELINE:

November 2018 – Prepare final work plan and conduct additional site investigation
December 2018 – Prepare final reports and submit for agency review

PROJECT/PROGRAM COST:

Fund name and number: Planning and Projects (2002)
Current fund balance: \$5,113.94 remains for previously authorized investigation.
Requested amount of funding: No additional funds are requested.
Is a budget amendment requested? No
Is additional staff requested? No

PAST BOARD ACTIONS:

May 25, 2017	RBA 17-037	Authorization to apply for Hennepin County grant funding
October 12, 2017	RBA 17-062	Authorization to apply for funding assistance for 325 Blake Road

SUMMARY:

In July 2017 the Minnehaha Creek Watershed District (District) and Wenck Associates were successful in receiving environmental investigation funds through the Hennepin County Closeout of Assistance (COA) Brownfield Gap Financing program. That grant effort was used to complete Phase I and Phase II Environmental Site Assessments, and develop a draft Construction Contingency Plan (CCP) and draft Response Action Plan (RAP) for demolition and abatement activities. Approximately \$5,000 remains of the approved work through the Hennepin County COA fund to complete additional tests based on preliminary feedback during agency review.

Regarding agency review, the Minnesota Pollution Control Agency (MPCA), during its review of the draft RAP, indicated a need to conduct additional soil investigations within the footprint of the industrial building. With the building slated for demolition in late 2018 the District sought supplementary funding to assist with the additional environmental investigation effort.

In November 2017 staff applied for a Hennepin County Environmental Response Fund (ERF) grant to assist with the additional site investigation and soil mitigation associated with preparing the 325 Blake Road site for restoration and redevelopment. The application was successful, resulting in the District being awarded \$25,000 in grant assistance in February 2018.

The focus of the ERF request was specific to completing the approved work plan for additional environmental investigation, as previously reviewed by the MPCA. The additional soil borings will further characterize the suitability of soils onsite and refine the District's understanding of the known petroleum contamination.

Work will be conducted in coordination with the District's demolition process to minimize the amount of disturbance at the site and complete the testing process prior to final stabilization. Veit & Company, the District's demolition contractor, is aware of the needed effort and can accommodate the test pit excavation.

As noted, Wenck Associates was the lead environmental consultant contracted by Hennepin County to conduct the site investigation as part of the COA funds, including a Phase 1 Environmental Site Assessment (ESA), Phase II ESA and draft Construction Contingency Plan (CCP). Wenck also developed the draft RAP and has all relevant background information and data to conduct this continued assessment consistent with the District's vision and goals for the Site. A portion of this scope of work is finalizing the effort approved through the COA grant.

Staff is recommending the MCWD Board of Managers authorize the administrator to enter into an agreement with Wenck Associates for continued environmental investigation at 325 Blake Road. The focus of this approval is related to the recently awarded Hennepin County ERF award of \$25,000. All additional work was previously approved for contract with the Hennepin County Closeout of Assistance (COA) program in 2017.

RESOLUTION

RESOLUTION NUMBER: 18-113

TITLE: **Authorization to execute a contract with Wenck Associates for continued environmental investigation at 325 Blake Road**

WHEREAS, Hennepin County administers the Environmental Response Fund (ERF) grant program to fund the assessment and cleanup of contaminated sites in order to reduce barriers to site redevelopment and, as part of the ERF grant program, Hennepin County manages a rolling investigation program funded through the Closeout of Assistance (COA) Hennepin County Brownfield Gap Financing program; and

WHEREAS, in May 2017 the Board authorized staff, with Wenck Associates as the preferred consultant, to apply for funding assistance through the COA Hennepin County Brownfield Gap Financing program for additional environmental site investigation on the 325 Blake Road property; and

WHEREAS, in July 2017 the District received notification that the Hennepin County COA program was capable of funding the project at 75% of the total request (\$48,276) for an approved grant award of \$36,207;

WHEREAS, in October 2017 the MCWD Board of Managers authorized the pursuit of Hennepin County Environmental Response Fund (ERF) grant funding to assist with additional site investigation and soil mitigation associated with preparing the 325 Blake Road site for restoration and redevelopment; and

WHEREAS, in February 2018 the MCWD was awarded an Environmental Response Fund (ERF) grant from the Hennepin County Environment and Energy Department in the amount of \$25,000 for assistance with additional environmental site investigation activities;

WHEREAS; in 2015 and 2017 the MCWD completed environmental assessment work including a Phase 1 Environmental Site Assessment (ESA), Phase II ESA, a Construction Contingency Plan (CCP) and Response Action Plan (RAP), and Wenck Associates remained the lead consultant of this environmental work including the supplementary site investigation work that was contracted by Hennepin County;

WHEREAS; Wenck Associates is uniquely qualified for this additional effort based on its history of work for the MCWD on this project, its extensive knowledge of environmental conditions on the site, and its existing contract to complete investigation work, which was approved in 2017 and is accompanying this effort;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the District Administrator to execute a contract with Wenck Associates for additional environmental investigation at 325 Blake Road in the amount of \$25,000.

Resolution Number 18-113 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____



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September 26, 2018

Mr. Michael Hayman

Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345

RE: Cold Storage Property – Additional Soil and Soil Vapor Investigation Activities
325 Blake Road North, Hopkins, MN
Wenck File #B0185-0069

Mr. Hayman:

Wenck Associates, Inc. (Wenck) has prepared this proposal to summarize the additional environmental investigation scope of work and costs at the Cold Storage Property located at 325 Blake Road North in Hopkins, MN (the Site). The Minnehaha Creek Watershed District (MCWD) has owned the 16.84-acre Site since September 30, 2011 and is proposing to redevelop the property. As part of future redevelopment activities additional soil and soil vapor investigation activities are warranted.

MCWD has received additional investigation funding from the Hennepin County ERF and has additional funds left in the Hennepin County COA to be used for proposed investigation activities. Approximately \$5,113.94 remains in the Hennepin County COA fund out of the proposed cost of \$48,276. MCWD is responsible for 25% of that amount which is equal to \$1,278.47 (\$3,835.47 to be covered by Hennepin County). MCWD has also been awarded \$25,000 through the Hennepin County ERF. Total funding remaining for investigation to date is \$30,113.94.

Background

The Site was historically occupied by agricultural land with a farmstead in the northwest corner of the property. In 1950/51, the Site was developed with a portion of the cold storage building. Additions to the building have been made over the years. The building was approximately 277,000 square feet and had been leased to several tenants for cold storage use. These tenants have included Fanny Farmer Candy Shop, Inc., Le Groc Company, the John Sexton Company, Merchants Refrigerating Company, Country Club Markets, C S Integrated, Par Grand Distributing, Royal Foods, Inc., Atlas Cold Storage, Jack’s Original Pizza, Supervalu, Nordic Ware, Citrus Systems, and Deli Express.

MCWD purchased the Site on September 30, 2011 from the Stewart Lawrence Group.

In 2018, asbestos abatement and demolition activities commenced at the Site. As of September 15, 2018, the west end of the building has been demolished, removed and turned over to Hennepin County for the Blake Road Expansion Project. The remainder of the building continues to be abated and demolished.

Mr. Michael Hayman
MCWD
September 26, 2018



Phase I Environmental Site Assessment (September 2011)

A Phase I Environmental Site Assessment (ESA) was performed on the Site by Wenck in September 2011. The 2011 Phase I ESA identified the following *recognized environmental condition* and *historical recognized environmental conditions* in connection with the Site:

- ▲ The presence of identified releases at the Site that will require attention through the development of a Construction Contingency Plan (CCP) and a Development Response Action Plan (DRAP) is a *recognized environmental condition*.
- ▲ The presence of a closed LUAST incident at the Site is an *historical recognized environmental condition*.
- ▲ The presence of several historical spill incidents at the Site constitutes an *historical recognized environmental condition*.
- ▲ Past impacts from an off-site, upgradient LUAST incident, now a closed incident, constitutes an *historical recognized environmental condition*.

Work Plan for Additional Investigation (March 2013)

A Work Plan for Additional Investigation was submitted to the MPCA Brownfields Program (VP23681) for comment and approval. Comments were submitted back to Wenck in a memo dated May 9, 2013 requesting additional vapor sampling. This additional work was not conducted until 2017 as described below.

Phase I ESA (August 2017)

The 2017 Phase I ESA identified the following *recognized environmental conditions* and *controlled recognized environmental conditions* in connection with the Site:

- ▲ The presence of elevated PAHs above regulatory limits near the northeast corner of the property building is a *recognized environmental condition*.
- ▲ The presence of a closed LUAST incident at two locations on the Subject Property is a *controlled recognized environmental condition*.
- ▲ A 500-gallon spill of mineral oil and existing petroleum impacts from the spill to the soil around the pad-mounted transformer on the Subject Property constitutes a *controlled recognized environmental condition*.
- ▲ Petroleum impacts are evident in the soil and groundwater on the west side of the Subject Property from a closed off-site LUAST incident. These impacts constitute a *recognized environmental condition*.

Phase II ESA (August 2017)

The objective of the Phase II ESA was to identify if soil, groundwater and/or soil vapor impacts were present at the Site at concentrations of concern, to assess the RECs identified in the 2017 Phase I ESA and to complete an investigation for future site redevelopment.

Sixteen soil borings were advanced on the Site to a depth of approximately 20 feet below grade. Five of the soil borings were converted to permanent monitoring wells. In addition, five soil vapor probes were advanced at the Site to eight feet below grade.

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Soil results showed petroleum concentrations below the MPCA unregulated fill reuse criteria with the exception of a soil sample collected just north of the closed-in-place underground storage tank (UST) at a depth of 10-12 feet. PAHs were detected slightly above regulatory limits near the northeast corner of the Site building. GRO was not detected during this study and RCRA metal concentrations were not elevated.

Based on one round of soil vapor sampling, VOCs were detected below the limit of 33X the Residential Intrusion Screening Values with the exception of 1,3-butadiene in a sample collected near the closed-in-place UST.

Two rounds of groundwater sampling revealed low-level petroleum VOCs in well MW-1 during the initial sampling event. The second sampling event did not reveal detections of the analyzed parameters in the monitoring wells.

Future Development Activities

Future redevelopment plans at the Site include the demolition of the current building and infrastructure at the Site to prepare the Site for construction of the planned regional stormwater treatment basin on the east portion of the Site and future mixed-use site redevelopment (to be determined) for the portion of the Site off Blake Road to the west. The construction of the stormwater treatment basin is part of the Powell Road Stormwater Diversion Project and is located on the northeast side of the Site along Minnehaha Creek.

Proposed Investigation Activities

Based on the review of past data and a conversation with the MPCA Brownfields Program staff, additional investigation activities will need to be conducted at the Site to characterize the soils and soil vapors for future development. The scope of work would include the following:

- Prepare an *Additional Investigation Work Plan* to be submitted to Hennepin County and the MPCA Brownfields Program for review and approval.
- Conduct test pits using the current on-site contractor along the north side of the site building (within the location of the former railroad spur), around the northeast corner of the building and within the building footprint to collect soil samples (up to 15) for analysis of DRO, VOCs, PAHs and RCRA metals.
- Conduct geoprobe borings to 8-10 feet below grade to collect soil vapor samples. The MPCA recommends two rounds of soil vapor sampling per planned building. Based site very preliminary concept plans, we have estimated a total of 24 samples to be collected (one round of 12 during the cooling season and one round of 12 during the heating season).
- Prepare an investigation report summarizing the investigation activities and data. The report will include our conclusions and recommendations.
- Draft a Response Action Plan for the proposed development work.

Below is a table summarizing the investigation activities and estimated costs. The estimated costs are based on time and materials. Specific cost information is included on the attached Table 1 – Additional Investigation Cost Opinion.

Mr. Michael Hayman
MCWD
September 26, 2018



Task No.	Investigation Activity	Estimated Cost
1.1	Additional Investigation - Investigation Work Plan - Test pits to collect up to 15 soil samples for DRO, VOCs, RCRA metals and PAHs. - 24 soil vapor borings for TO-15 analysis - Investigation report with conclusions and recommendations	\$26,416
1.2	Response Action Plan / Construction Contingency Plan (RAP/CCP)	\$3,693
	Total Estimated Grant Eligible Cost:	\$30,109

As mentioned, attached Table 1 breaks out the specific costs for each task as well as the staffing rates. If you need specific staff names, please let us know and we can provide that to you in an email. We propose a 10% markup of the subcontractor costs.

Should you have any questions, or need clarification of anything presented in this letter, please do not hesitate to call me at 612-807-3249 or Adam Zobel at 763-479-5145.

Sincerely,

Michelle L. Hosfield
Wenck Associates, Inc.
Environmental Scientist / Associate

Adam Zobel
Wenck Associates, Inc.
Senior Environmental Project Manager / Real Estate Resources

Enc: Table 1 – Additional Investigation Cost Opinion



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Add'l Investigation Cost Opinion

Project No. B0185-0069

Date: 09/26/18

**Table 1 - Additional Investigation Activities
Cold Storage - 325 Blake Road North
Hopkins, MN**

STAFFING RATES							
Wenck Staff:	Principal	Project Manager	Senior Tech.	Tech.	Drafting	Admin	
Hourly Rate:	\$194	\$155	\$123	\$114	\$114	\$80	
ADDITIONAL INVESTIGATION							
PROJECT TASKS & LABOR							Totals
Investigation Work Plan		6			2		\$ 1,158.00
Project Coordination and Mobilization		4		5			\$ 1,190.00
Phase II ESA Field Work and PM		4		30			\$ 4,040.00
Phase II ESA Reporting	1	8	12	10	4	1	\$ 4,586.00
TOTAL HOURS	1	22	12	45	6	1	87
SUB-TOTAL OF STAFF FEES	\$194	\$3,410	\$1,476	\$5,130	\$684	\$80	\$10,974.00
DIRECT EXPENSES	Amount	Unit Cost	Unit	Notes		Extension	
TRAVEL							
Mileage	200	\$0.575	per mile	Standard Mileage		\$115.00	
Per Diem	0	\$35.00	per day	Standard Per Diem		\$0.00	
Lodging	0	\$120.00	per night	Standard Lodging		\$0.00	
TRAVEL EXPENSES SUB-TOTAL							\$115.00
EQUIPMENT							
PID	3	\$100.00	per day	Standard Equipment		\$300.00	
Safety Equipment & PPE	5	\$20.00	per day	Standard Equipment		\$100.00	
XRF - Lead-Based Paint	0	\$120.00	per day	Standard Equipment		\$0.00	
Vapor Sampling Equipment	0	\$500.00	per day	Standard Equipment		\$0.00	
Specialty Equipment	0	\$0.00	per day	Standard Equipment		\$0.00	
EQUIPMENT EXPENSES SUB-TOTAL							\$400.00
SUB-CONTRACTOR/S							
LABORATORY/FEI							
DRO - Soil	15	\$29.00	sample	5-7 day turn-around-time		\$435.00	
GRO - Soil	0	\$23.00	sample	5-7 day turn-around-time		\$0.00	
VOCs - Soil	15	\$55.00	sample	5-7 day turn-around-time		\$825.00	
PAHs - Soil	15	\$80.00	sample	5-7 day turn-around-time		\$1,200.00	
RCRA - Soil	15	\$70.00	sample	5-7 day turn-around-time		\$1,050.00	
PCB - Soil	0	\$70.00	sample	5-7 day turn-around-time		\$0.00	
VOCs - Vapor TO-15	24	\$190.00	sample	5-7 day turn-around-time		\$4,560.00	
LABORATORY EXPENSES SUB-TOTAL							\$8,070.00
DRILLING CONTRACTORS							
Geoprobe Contractor	bid	\$5,000	lump sum	NA		\$5,000.00	
Private Utility Locator	estimate	\$500	lump sum	NA		\$500.00	
SUB-CONTRACTOR/S SUB-TOTAL							\$5,500.00
SUB-TOTAL OF STAFF FEES							\$10,974.00
SUB-TOTAL OF DIRECT EXPENSES							\$515.00
SUB-TOTAL OF SUB-CONTRACTOR/S							\$13,570.00
SUB-CONTRACTOR ADMINISTRATIVE MARK-UP (10%)							\$1,357.00
ADDITIONAL INVESTIGATION TOTAL COST							\$26,416.00
RESPONSE ACTION PLAN / CONSTRUCTION CONTINGENCY PLAN							
RAP/CCP Total Hours	2	5	10	5	5	2	\$3,693.00
RAP/CCP TOTAL COST							\$3,693.00

Total Grant Eligible Costs: \$ 30,109.00

GENERAL TERMS AND CONDITIONS

Article 1 Our Agreement

1.1 Our agreement with you consists of these General Terms and Conditions and the accompanying written proposal or authorization (Agreement). This Agreement is our entire Agreement and supersedes all prior agreements. This Agreement may be modified only in a writing signed by both us and you, making specific reference to the provision modified. Directing us to start work prior to execution of this Agreement constitutes your acceptance of this Agreement.

1.2 The words “you,” “we,” “us,” and “our” include officers, employees, and subcontractors.

1.3 Any conflicting or additional terms in a purchase order, work order, or other form used to authorize our services are not part of our Agreement unless we specifically accept them in writing. If we cannot agree on mutually acceptable terms, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered.

Article 2 Our Responsibilities

2.1 We will provide the services specifically described in our Agreement. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our services, we will use that degree of care and skill ordinarily exercised by reputable members of our profession practicing under similar circumstances in the same locality at the same time. .

2.3 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

2.4 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing. You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us.

2.5 Our estimates of construction or remediation costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

2.6 Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and that site conditions may change over time.

Article 3 Your Responsibilities

3.1 You agree to provide us with all site information and data to which you have access which may affect our services. We will not be responsible for locating buried objects at the site unless we accept that duty in writing. You agree to hold us harmless from claims, damages, losses, and related expenses involving buried objects that were not properly marked or identified or of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others on your behalf furnished to us.

3.2 You will provide access to the site. In the course of our work some damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site but we will not be responsible for reasonable or normal damage. We have not included the cost of restoration of such damage in the estimated charges.

3.3 You agree to provide us with information in your possession or control relating to contamination at the work site.

3.4 Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. You agree to hold us harmless and indemnify us from any such claim or loss.

3.5 Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless we accept that duty in writing.

3.6 You agree to make disclosures required by law. In the event you do not own the site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. You agree to hold us harmless and indemnify us from claims related to disclosures made by us that are required by law and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.

Article 4 Reports and Records

4.1 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. You agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

4.2 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you.

4.3 If you do not pay for our services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

GENERAL TERMS AND CONDITIONS

4.4 Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your property. They may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

4.5 Electronic data, reports, photographs, samples and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Article 5 Compensation

5.1 You will pay for services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices on receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

5.3 If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

5.4 Your obligation to pay for our services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of lawsuit in which we are not involved, your successful completion of a project, receipt of payment from another, or any other event. No retainage will be withheld.

5.5 You agree to compensate us in accordance with our fee schedule if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

5.6 If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation.

5.7 In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to fees otherwise due us.

Article 6 Disputes, Damage, and Risk Allocation

6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to

those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

6.3 For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the proceeds from available insurance.

6.4 You agree to indemnify and defend us from all liability to others in excess of the risk allocation stated above and to insure this obligation.

6.5 The prevailing party in any action relating to this agreement shall be entitled to recover its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.

6.6 The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury.

Article 7 General Indemnification

7.1 We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

7.2 To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

7.3 You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

Article 8 Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request.

8.2 You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

8.3 Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.4 Our Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

8.5 If a provision of this Agreement is invalid or illegal, all other provisions shall remain in full force and effect.