

**FOURTH AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
HDR ENGINEERING, INC.**

THIS FOURTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "Fourth Amendment") is made as of March 1, 2012, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and HDR Engineering, Inc., a Nebraska corporation (the "Contractor").

RECITALS

A. The Town and the Contractor entered into a Professional Services Agreement dated May 15, 2008 (the "Initial Agreement") for the review of the existing traffic conditions and geometrics at the Shea Boulevard/Saguaro Boulevard intersection and for recommendations to improve the intersection performance and safety as part of the Shea Boulevard Widening Project (the "Project") as the first phase of design services related to the intersection improvements. The Initial Agreement was amended by that certain First Amendment to Professional Service Agreement on August 7, 2008, to continue with the second phase of the intersection improvements (the "First Amendment"), by that certain Change Order on December 31, 2009 to add supplemental survey activities not part of the original scope of work and extend the term of the agreement for the Project (the "Second Amendment") and by that certain Third Amendment to Professional Services Agreement on June 2, 2011, to add additional services and extend the terms of the agreement for the Project (the "Third Amendment"). Collectively the Initial Agreement, the First Amendment, the Second Amendment and the Third Amendment are referred to herein as the "Agreement."

B. After execution of the Third Amendment, the Town approved an amendment to a development agreement related to Firerock Plaza (the "Development Agreement Amendment"). As a result of the Development Agreement Amendment, the Town agreed to include certain roadway-related improvements into the design for Shea Boulevard that will impact the Project. The Town has determined that additional services are needed with respect to the Project to incorporate the changes resulting from the Development Agreement Amendment (the "Additional Services").

C. The Town has also determined that it is necessary to extend the term of the Agreement to allow for completion of the Additional Services.

D. The Town and the Contractor desire to amend the Agreement to provide for the Additional Services and extend the term of the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree to amend the Agreement as follows:

1. Scope of Services. The Contractor shall provide the Additional Services as set forth in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference.

2. Compensation. The Contractor's total compensation under the Agreement shall be increased by no more than \$50,139.00 from \$349,163.00 to \$399,302.00 as consideration for the Additional Services as more particularly set forth in Exhibit A.

3. Term of Agreement. The term of the Agreement shall be extended from December 31, 2011 until May 31, 2012.

4. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. Non-Default. By executing this Fourth Amendment, the Contractor affirmatively asserts that the Town is not currently in default, nor has been in default at any time prior to this Fourth Amendment, under any of the terms or conditions of the Agreement.

6. Conflict of Interest. This Fourth Amendment may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

Julie A. Gheti
Julie A. Gheti, Interim Town Manager *for*

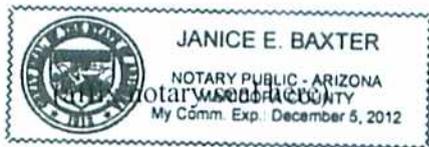
ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BJ This instrument was acknowledged before me on March 5, 2012, by ~~Julie A. Gheti~~ *Mark Mayer*, the Interim Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.



Janice E. Baxter
Notary Public in and for the State of Arizona

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

“Contractor”

HDR ENGINEERING, a Nebraska corporation

By: [Signature]

Name: Don P. Manthe

Its: AZ V.P.; M.P.

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on February 23rd, 2012, by Don P. Manthe as AZ Vice President, M.P. of HDR ENGINEERING, INC., a Nebraska corporation, on behalf of the corporation.

[Signature]
Notary Public in and for the State of Arizona

(affix notary seal here)



LISA L. SCOTT
Notary Public - Arizona
Maricopa County
Expires 09/30/2013

EXHIBIT A
TO
FOURTH AMENDMENT
TO THE
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
HDR ENGINEERING, INC.

[Scope of Work]

See following pages.

July 20, 2011

Mr. Randy Harrel, P.E.
Town Engineer
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

RE: Shea Boulevard and Saguaro Boulevard Intersection Improvements
Contract Amendment No. 4

Dear Randy:

HDR is submitting Contract Amendment No. 4 to the above referenced contract. This contract modification addresses substantial changes to the plans that were requested by the Town of Fountain Hills and were not part of the original Scope of Work for the project.

The "out of scope work" in this amendment consists of the following work adjacent to Firebrick Plaza:

1. Add sidewalk on the south side of Shea Blvd. from where it was previously terminated (approximately Sta 263+00 to Sta 265+75) across the Cereus Wash 3-cell Reinforced Concrete Box Culvert and connecting to the existing sidewalk just east of Cereus Wash. This work will entail modifications to the existing 3-cell box culvert and construction of a retaining wall.
2. Provide two 3" traffic signal interconnect conduits adjacent to the sidewalk from approximately Sta 264+50 to Sta 265+60 where it will tie into existing conduits. Also need show interconnect conduit from approximately Sta 269+50 to Sta 274+00.
3. Extend traffic signal interconnect plans from the western limit of the 60% plans in a westerly direction to match into the east end of the Shea Climbing Lane project plans (approximately Sta 225+00 to Sta 232+34).
4. HDR's geotechnical subconsultant, Acura Engineering, has included their cost proposal for drilling two borings, conducting necessary testing and providing their recommendations in a geotechnical report to support the design of the retaining wall as indicated in item No. 1 above.

A more detailed description of all of the above items is provided in the Scope of Services document attached with this cover letter.

We trust that you will find the attached documents in order. If you have any questions regarding this contract amendment, please do not hesitate to contact Steve Cherewick at 602-522-7744.

Sincerely,

HDR ENGINEERING, INC.



Don Manthe, P.E.
V.P., Managing Principal

Attachment

cc: file

**SHEA BOULEVARD / SAGUARO BOULEVARD
INTERSECTION IMPROVEMENTS**

TOWN OF FOUNTAIN HILLS

CONTRACT AMENDMENT NO. 4

SCOPE OF SERVICES

This Scope of Services details a request from the Town of Fountain Hills for additional work to be performed on the Shea Boulevard / Saguaro Boulevard Intersection Improvements project. The additional services that were requested are discussed in greater detail below:

1. The Town has requested that HDR provide plans for additional sidewalk on the south side of Shea Boulevard from where it currently ends (approximately Sta 263+00) in an easterly direction crossing Cereus Wash and connecting to the existing sidewalk at approximately Sta 265+75. The construction of a sidewalk over the Cereus Wash will require modification of the existing 3-cell 12' x 12' Reinforced Concrete Box Culvert (RCBC). These modifications will include the construction of a retaining wall that is connected to the RCBC as well as independent walls on either side of the wash area. The addition of the sidewalk and retaining wall will add the following drawings to the plan set:
 - General Notes and Quantity Sheet
 - Removals and Excavation/Backfill Pay Limits
 - Plan and Elevation
 - Retaining Wall Typical Section and Details (on RCBC)
 - Retaining Wall Typical Section and Details

2. The Town has requested that HDR provide plans for the installation of two 3" traffic signal interconnect conduits between approximately Sta 264+50 and Sta 265+60 where it will tie into existing conduits. Similarly, the Town has directed HDR to also show two 3" interconnect conduits between approximately Sta 269+50 to a termination point at Sta 274+00. At a selected location east of Monterey Drive conduit should be extended in a northerly direction to allow for installation of both Eastbound and Westbound counting loops. The modifications listed above will result in the addition of the following drawings to the plan set:
 - 2 new signal interconnect drawings showing the interconnect extension to the east (Sta 274+00)

3. The Town also requested that HDR extend the western end of the interconnect plans so that they match into the eastern terminus of the Shea Climbing Lane plans. The nearest pull box to tie into is at approximate Sta 225+00. This would necessitate the addition of the following drawings to the plan set:

- 2 new signal interconnect drawings to the west connecting into the Shea Climbing Lane project limits (from approximate Sta 225+00 to Sta 232+34).
4. In order to support the design of the retaining wall mentioned in No.1 above, HDR's geotechnical subconsultant, Acura Engineering, has included their cost proposal for drilling two borings, conducting necessary testing and providing their recommendations in a geotechnical report. The two borings will be taken to a depth of 25' on the south side of Shea Boulevard both east and west of the existing RCBC. Acura will perform all required testing and provide their geotechnical recommendations in a report. The Acura cost proposal is attached to this contract amendment for review.

**Shea Boulevard and Saguaro Boulevard
Intersection Improvements - Final Design
SUMMARY -- Contract Amendment No. 4
DERIVATION OF COST PROPOSAL**

ESTIMATED DIRECT LABOR:

Classification	Est. Hours	Avg. Hourly Rate	Labor Cost
Senior Project Manager	0	\$175.00	\$ -
Design Project Manager	24	\$165.00	\$ 3,960
Senior Engineer	45	\$165.00	\$ 7,425
Project Engineer	116	\$115.00	\$ 13,340
Project Designer	36	\$100.00	\$ 3,600
CADD Tech	60	\$100.00	\$ 6,000
Clerical	8	\$70.00	\$ 560
	<u>289</u>	Total Estimated Labor	<u>\$ 34,885</u>

ESTIMATED DIRECT EXPENSES:

Mileage (Auto)	\$ 25
Technology Charge	\$ 1,069
Reproduction	\$ 145
Presentation Materials / Photography / Renderings	\$ -
Postage & Messenger	\$ 25
	<u>\$ 1,264</u>

ESTIMATED OUTSIDE SERVICES AND CONSULTANTS

FIRM	METHOD OF COMPENSATION	COST
ALPHA Engineering -(Survey)	Lump Sum	\$ -
Acura Engineering (Geotechnical Investigations)	Lump Sum	\$ 13,990
Coates Irrigation (Irrigation Designs)	Lump Sum	\$ -
	Total Estimated Outside	<u>\$ 13,990</u>

Total Estimated Cost to HDR = \$ 36,149
 Total Lump Sum Cost = \$ **50,139**

ALLOWANCE ITEMS

Acura Engr (Landscape Repairs)			\$0
ALPHA Engineering			
Prepare Legal Descriptions (4 Ea)			
Registered PLS	0	\$178.00	\$ -
Surveyor/Designer	0	\$100.00	\$ -
Adminisrtation	0	\$44.00	\$ -
	<u>0</u>		<u>\$ -</u>

Utility Locating Service (5 potholes) 0 \$225

TOTAL ALLOWANCES NOT TO EXCEED: \$0



 Don P. Manthe, P.E.
 Vice President, Managing Principal

7/21/11

 Date

**Contract Amendment No. 4
Intersection Improvements - Final Design**

Description	Total Hours	Senior PM	Design PM	Sr Eng.	Project Eng.	Project Designer	CADD Tech	Clerical
Additional Sidewalk (Sta 263+00 to Sta 266+00)	42							
Sidewalk Layout	42		2		32		8	
Retaining Wall design and structural work on RCBC	164							
General Notes and Quantity Sheet	30			2	12	8	8	
Removals & Excavation/Backfill Pay Limits Sheet	30			2	12	8	8	
Plan and Elevation Sheet	28			4	12	4	8	
Retaining Wall Typical Section and Details (on RCBC)	38			2	16	8	12	
Retaining Wall Typical Section and Details	38			2	16	8	12	
Install 2 runs of 2-3" traffic signal interconnect conduit	14							
Sta 264+50 to 265+60; Sta 269+50 to 274+00	14		1	8	3		2	
Extend 2-3" traffic signal interconnect conduit to west	14							
Sta 225+00 to Sta 232+34	14		1	8	3		2	
Supporting Tasks	55							
Specification Revisions	6		2	4				
Cost Estimate/Quantity Revisions	12		2	4	6			
Meetings	12		4	4	4			
QA/QC Review	9		4	5				
Project Administration	16		8					8
Totals:	289	0	24	45	116	36	60	8

DERIVATION OF ESTIMATED DIRECT EXPENSES

Intersection Improvements - Final Design

Contract Amendment No. 4

TRAVEL

Mileage (Personal vehicles)

	<u>Trips</u>	<u>Mi / Trip</u>	<u>Cost / Mi</u>	<u>Total</u>
Site Visits	1	50	\$ 0.505	\$ 25
Trips to Town of FH	0	50	\$ 0.505	\$ -

TOTAL TRAVEL COST

\$ 25

REPRODUCTION IN HOUSE

	<u>Sets</u>	<u>No. Copies</u>	<u>Cost</u>	<u>Total</u>
Photo Copies (200/month for 6 months)		100	\$ 0.06	\$ 6
Submittals				
30% Half Sized Plans	0	0	\$ 0.42	\$ -
60% Half Sized Plans	0	0	\$ 0.42	\$ -
90% Half Sized Plans	8	10	\$ 0.42	\$ 34
100% Half Sized Plans		1	\$ 0.42	\$ -
Final Vellums	1	10	\$ 10.00	\$ 100
Specs & Estimates	8	10	\$ 0.06	\$ 5

TOTAL REPRODUCTION COSTS

\$ 145

TECHNOLOGY CHARGE

	1			
Technology Charge at \$3.70 per labor hour	289		\$ 3.70	\$ 1,069

MISCELLANEOUS COSTS

	<u>No.</u>	<u>Cost</u>	<u>Total</u>
Misc Postage/Courier Service	2	\$ 12.50	\$ 25
Presentation Materials / Photography	0	\$0	\$ -

TOTAL MISCELLANEOUS COSTS

\$ 25

TOTAL DIRECT EXPENSES

\$ 1,264

Mr. Steve Cherewick, PE
HDR Engineering, Inc.
3200 E Camelback, #350
Phoenix, AZ 85018

Proposal No. P11-100rev1
July 19, 2011

**REVISED Proposal for Geotechnical Investigation
Cereus Wash Crossing
Shea Blvd, ¼ mi N/o SR 87
Fountain Hills, Arizona**

Mr. Cherewick:

Acura Engineering thanks you for the opportunity to provide this revised cost estimate for a geotechnical investigation for the above-referenced project.

The project consists of the construction of a new retaining wall and sidewalk adjacent and over the Cereus Wash box culvert (3-cell, reinforced concrete) on the west side of Shea Boulevard about ¼ mile north of SR87 in Fountain Hills, Arizona.

The geotechnical investigation and report for the project will include field, laboratory, and engineering phases. The purposes of the investigation are to:

- Determine subsurface conditions at the project site;
- Provide foundation design and earthwork recommendations; and
- Provide information helpful during construction.

Acura will attempt to drill and sample two 25 foot deep test borings, one on each side of the Cereus Wash RCBC on the west side of Shea Boulevard. Borings will be drilled to the target depths, or to auger refusal, whichever is encountered first.

Laboratory tests will consist of the following:

Moisture Content/Ring	
Density	4
Sieve Analysis	4
Atterberg Limits	4
Standard Proctor	1
R-Value	0
Swell Potential	1
Consolidation/Collapse	2
3 Pt Direct Shear (in-situ, sat'd)	2
3 Pt Direct Shear (in-situ, dry)	2
pH & Resistivity	2
Soluble Sulfates & Chlorides	2

Engineering analyses of the results of the field and laboratory data will be made to develop recommendations for foundation design. The report will include the following:

1. General subsurface conditions, including boring logs with descriptions of strata, summaries of laboratory test results, and water levels obtained at the time of drilling;
2. Boring location plan;
3. Recommended foundation types and allowable bearing pressures, along with comments regarding settlement and/or heave;
4. Provide general foundation construction requirements;
5. Recommendations for earthwork

One electronic (pdf) copy and two (2) paper copies of the report will be submitted.

Based on the scope of work outlined above the proposed cost for the Geotechnical Services is a lump sum amount of **\$13,990.00**. The breakdown is as follows:

Permitting	\$ 805.00
Layout and Blue Stake	900.00
Fieldwork (incl. traffic control)	3,470.00
Laboratory Testing	2,885.00
DRAFT Report	3,465.00
FINAL Report	1,665.00
Trip Charges + Miscellaneous	800.00
TOTAL	\$ 13,990.00

The above estimated fee is based on the following:

1. The site is completely accessible for a conventional truck mounted drill rig (CME 55 or 75).
2. Field work is carried out during normal business hours, Monday-Friday, sometime between 5am and 5pm.

The fee may be exceeded if site conditions are significantly different than anticipated or changes in work are required or requested, or if landscaping repair is required. However, the estimated maximum fee will not be exceeded without the client's prior authorization. Required additions to the above scope of services would be invoiced in accordance with our standard fee schedule.

Weather and site conditions permitting, field operations can start 3 to 7 days after receipt of formal authorization to proceed to allow for utility clearance with Arizona BlueStake, permitting and drill rig scheduling. Borings will take 1 day to drill. The report will be submitted about 3 weeks following completion of the fieldwork.

Terms and Conditions

The attached Terms and Conditions describes general contractual conditions including identification of client, on-site responsibilities and risks, warranty, invoicing procedures, and record and sample maintenance.

To indicate acceptance of this proposal, please have the signature block below signed by a duly authorized representative of the client, or attach it to your standard sub-consultant agreement, and return one copy to us for our files.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please call us if we can be of any additional assistance.

Sincerely,
Acura Engineering Arizona, LLC

Peter Rupal, P.E.
President

Attachments

CLIENT:

Firm Name

Authorizing Signature

Typed Name & Title

Date

GENERAL CONDITIONS

1. Parties to This Agreement

CLIENT as used herein is the entity who authorizes performance of services by ACURA ENGINEERING ARIZONA, LLC (ACURA) under the conditions stated herein. ACURA as used herein includes its employees and officers, and its subcontractors and subconsultants (including affiliated corporations).

2. On-site Responsibilities and Risks

2.1 Right-of-Entry. Unless otherwise agreed, CLIENT will furnish unfettered rights-of-entry and obtain permits as required for ACURA to perform the fieldwork.

2.2 Damage to Property. ACURA will take reasonable precautions to reduce damage to land and other property caused by ACURA's operations. However, CLIENT understands that damage may occur and ACURA's fee does not include the cost of repairing such damage. If CLIENT desires ACURA to repair and/or pay for damages, ACURA and CLIENT will agree in a separate writing or amendment to the Scope of Services as to the nature and extent of such repairs and will add the pre-agreed cost to ACURA's fee.

2.3 Toxic and Hazardous Materials. CLIENT will provide ACURA with all information within CLIENT's possession or knowledge as to the potential occurrence of toxic or hazardous materials, or Biological Pollutants (as defined in 10 below) at the site being investigated. If unanticipated toxic or hazardous materials, or biological pollutants are encountered, ACURA reserves the right to demobilize ACURA's field operations and to take immediate measures to protect health and safety at CLIENT's expense. Remobilization will proceed following consultation with ACURA's safety coordinator and CLIENT's acceptance of proposed safety measures and fee adjustments. CLIENT agrees to compensate ACURA for its extra work. CLIENT also recognizes there is a risk that sampling through an unknown contaminated zone may result in spread of contamination of an aquifer, underground stream, or other hydrous body not previously contaminated and in turn spreading hazardous materials off-site. CLIENT recognizes nothing can be done to prevent such an occurrence because such sampling is a necessary aspect of the work that ACURA will perform for CLIENT's benefit.

CLIENT waives any claim against ACURA and agrees to defend, indemnify and save ACURA harmless from any claim or liability for injury or loss of any type arising from ACURA's discovery of unanticipated hazardous materials on site.

2.4 Utilities and Pipelines. While performing ACURA's field work, ACURA will take reasonable precautions to avoid damage to subterranean and subaqueous structures, pipelines, and utilities. CLIENT agrees to defend, indemnify, and hold ACURA harmless for any damages to such structures, pipelines, and utilities that are not called to ACURA's attention and/or correctly shown on plans furnished to ACURA.

2.5 Site Safety. CLIENT acknowledges that it, or its construction contractor, assumes sole and complete responsibility for job site conditions during construction of the project, including specifically safety of persons and property. CLIENT further agrees to indemnify and hold ACURA harmless from any and all liability in connection with the performance or work during construction of this project, excepting liability arising directly from the negligence of ACURA. ACURA is not responsible for the job site safety of others, nor does ACURA have stop-work authority over work by others. However, ACURA will conduct its work in a safe, workman-like manner, and will observe the work-site safety requirements of CLIENT that have been communicated to ACURA in writing.

3. Standard of Care

3.1 ACURA agrees in connection with services performed under this Agreement that such services are performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or a similar locality. No warranty, expressed or implied, is made or intended by rendition of consulting services or by furnishing oral or written reports of the findings made.

3.2 CLIENT acknowledges that conditions may vary from those encountered at the location where borings, surveys, or explorations are made and that ACURA's data, interpretations, and recommendations are based solely on the information available to ACURA. ACURA is not responsible for the interpretation by others of the information developed or its re-use for purposes not designated in writing at the time of the Agreement.

4. Limitation of Remedies

To the greatest extent permitted by law, CLIENT's sole remedy against ACURA for claims and liabilities in any way arising out of or directly or indirectly related to ACURA's work for CLIENT will not exceed an aggregate limit of \$50,000 or the amount of ACURA's fee, whichever is less, regardless of the legal theory under which remedy is sought. In the event CLIENT does not wish to limit ACURA's remedy to this sum, and if CLIENT requests in writing prior to acceptance of this Agreement, ACURA agrees to negotiate a greater remedy amount in exchange for an increase in scope and fee appropriate to the project and remedy risks involved. Additionally, ACURA, its officers, directors, shareholders, employees and agents shall have no liability to Client for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of

Client's property or facility, shutdowns or service interruptions, loss of use, profits or revenue, inventory or use charges or cost of capital or claims of Client's customers.

5. Invoices and Payment

Invoices will be submitted at the completion of task elements, or, at ACURA's discretion, monthly for services rendered. Payment is due upon presentation of ACURA's invoice and is past due thirty (30) days from invoice date. CLIENT agrees to pay a financing charge of one and a half percent (1 1/2%) per month (or the maximum rate allowable by law, whichever is less), on past due accounts, and agrees to pay attorney's fees or other costs incurred in collecting any delinquent amount.

6. Data, Records, Work Product and Report(s), and Samples

Data, Records, Work Product and Report(s) are ACURA's property. All pertinent records relating to ACURA's services shall be retained for a minimum of two (2) years after completion of the work. CLIENT shall have access to the records at all reasonable times during said period. CLIENT agrees that all reports and other work furnished to the CLIENT and/or his agents not paid for, will be returned upon demand and will not be used for licensing, permits, design and/or construction. CLIENT also agrees that report plans and other work prepared by ACURA for the CLIENT, are for the sole use of the CLIENT and other parties designated jointly and agreed to in writing by CLIENT and ACURA.

7. Samples

All samples of soil and rock will be discarded ten (10) days after report submittal. However, upon CLIENT's written request at the time of proposal acceptance, samples will be delivered upon issuance of our report in accordance with CLIENT's instructions, or stored for an agreed upon charge.

8. Indemnification

ACURA agrees to indemnify and hold harmless Client, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including reasonable attorneys' fees or other loss ("Loss") to the extent caused by ACURA's negligent performance of its Services under this Agreement.

9. Consequential Damages

CLIENT and ACURA each agree that neither of them will be liable to the other for any consequential damages incurred by either due to the fault of the other, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

10. Biological Pollutants

ACURA's scope of work does not include the investigation, detection, or design related to the presence of any Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, mold, fungi, spores, bacteria, and viruses, and the byproducts of any such biological organisms. CLIENT agrees that ACURA will have no liability for any claim regarding bodily injury or property damage alleged, arising from, or caused directly or indirectly by the presence of or exposure to any Biological Pollutants. In addition, CLIENT will defend, indemnify, and hold harmless ACURA from any third party claim for damages alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants. If CLIENT requests in writing prior to acceptance of this Agreement, ACURA will negotiate a greater limitation amount, and remove CLIENT's responsibilities, in exchange for an increase in fee to develop an expanded scope of work to provide biological pollutant protection.

11. Acceptance of Agreement

These GENERAL CONDITIONS have been established in large measure to allocate certain risks between CLIENT and ACURA. ACURA will not initiate service without formal agreement on the terms and conditions set forth in these GENERAL CONDITIONS. Acceptance or authorization to initiate services shall be considered by both parties to constitute formal acceptance of all terms and conditions of these GENERAL CONDITIONS. Furthermore, all preprinted terms and conditions on CLIENT's purchase order or purchase order acknowledgment forms are inapplicable to these GENERAL CONDITIONS and ACURA's involvement in CLIENT's project.

12. Termination of Contract

CLIENT and ACURA may terminate services at any time upon ten (10) days written notice. In the event of termination, CLIENT agrees to fully compensate ACURA for services performed including reimbursable expenses to the termination date, as well as demobilization expenses. ACURA will terminate services without waiving any claims or incurring any liability.