

RESOLUTION NO. 2025-10-1223R

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH GEOTECHNICAL ENGINEERING SERVICES, INC. FOR A ROAD DISTRESS EVALUATION OF KLENC ROAD IN THE CITY OF TONTITOWN, ARKANSAS.

WHEREAS, it has come to the attention of the City of Tontitown that a portion of Klenc Road is experiencing premature failures and distress due to heavy traffic; and

WHEREAS, the City has received a proposal from Geotechnical Engineering Services, Inc. ("GTS, Inc."), attached hereto as Exhibit "A", to perform a pavement distress evaluation in order to determine the cause of the ongoing failures and distresses on Klenc Road and to map the current condition of the existing pavement for the estimated amount of \$19,000.00; and

WHEREAS, the City of Tontitown has determined it is in the best interest and benefit of the community to authorize the Mayor to negotiate and execute an agreement with GTS, Inc., attached hereto as Exhibit "A", for the estimated amount of \$19,000.00 to perform a pavement distress evaluation of Klenc Road.


NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Tontitown, Arkansas:

Section 1. The City Council hereby authorizes the Mayor to negotiate and execute an agreement with GTS, Inc., attached hereto as Exhibit "A", for the estimated amount of \$19,000.00 to perform a pavement distress evaluation of Klenc Road in the City of Tontitown in order to determine the cause of ongoing failures and distresses on Klenc Road and to map the current condition of the existing pavement.

Section 2. The Mayor and her designee are hereby authorized to take all such action as necessary in connection therewith.


PASSED AND APPROVED this 21 day of October 2025.

APPROVED:

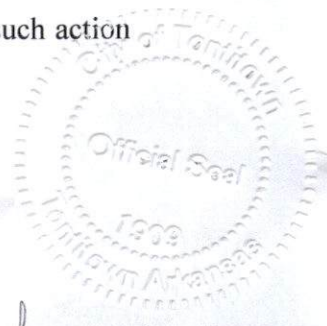


Angela Russell, Mayor

ATTEST:



Rhonda Ardemagni, City Clerk-Treasurer
(SEAL)





AGREEMENT FOR GEOTECHNICAL ENGINEERING SERVICES

THIS AGREEMENT, effective as of this _____ day of _____, 2025, is by and between _____ ("Client") and GTS, Inc. ("Engineer").


THE PROJECT is understood to consist of:

A pavement distress evaluation of Klenc Road in Tontitown, Arkansas.

THIS AGREEMENT consists of the appended documents which are incorporated herein by reference:

- GTS Proposal No. **GTS125163-R1** (a/k/a SCOPE OF SERVICES); AND
- GENERAL CONDITIONS FOR GEOTECHNICAL ENGINEERING SERVICES

Engineer agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This Agreement may not be modified or altered, except in writing as specifically described in this Agreement.

	<u>CLIENT:</u>		<u>ENGINEER:</u>
Signature:	_____		_____
Print Name:	_____	Travis Willis, P.E.	_____
Title:	_____	Principal	_____
Company:	_____	GTS, Inc	_____
Address:	_____	1915 N Shiloh Drive	_____
	_____	Fayetteville, Arkansas 72704	_____
Date:	_____	9-16-25	_____
Phone:	_____		_____
Email:	_____		_____



1911 North Shiloh Drive
Fayetteville, Arkansas 72704
Office: (479) 521-7645
www.gtsconsulting.net

Licensed:
Arkansas • Arizona • Kansas • Kentucky
Louisiana • Missouri • New Mexico
Ohio • Oklahoma • Texas



August 28, 2025
Revised September 16, 2025

City of Tontitown
235 East Henri De Tonti Boulevard
Tontitown, Arkansas 72762

Through: CK Civil Engineering, LLC
Mr. Clint Karstetter, P.E.

Regarding: Proposal for Geotechnical Engineering and Pavement Evaluation Services
Klenc Road Distress Evaluation
Tontitown, Arkansas
GTS Proposal No. GTS125163-**R1**

Mr. Karstetter:

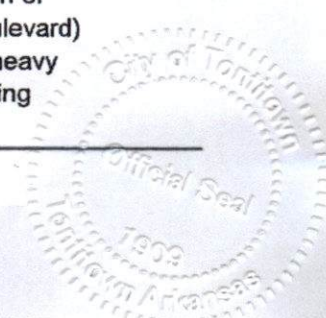
This proposal is based on an email exchange between yourself and Mr. Nathan Parnell, P.E., with GTS, Inc. (GTS), that took place on August 7, 2025, as well as a follow-up telephone conversation between the same two individuals that occurred on August 11, 2025. The following document was also provided in the referenced email exchange. Please let us know if the project information portion of this proposal requires revising, based on your current understanding of the project.

- **One (1) sheet, titled "Klenc Road Weight Limit Testing", undated, provided on August 7, 2025, and prepared by CK Civil Engineering, LLC.** This document provides an aerial image of the existing road alignment, including station numbers along with seven (7) requested boring ("test core") locations.

It should be noted that this proposal has been revised based on an email from Mr. Zak Johnston, P.E. with CK Civil Engineering, LLC on September 16, 2025. Included in this email, was a request to optimize the field services and remove the "follow-up" PCI Survey previously included in our proposal. GTS still recommends that this follow-up work take place under a different scope of work. All information added to this proposal can be found with bold and italicized formatting.

PROJECT INFORMATION

Currently we understand that the City of Tontitown, Arkansas is concerned that a portion of Klenc Road, extending from Arkansas Highway 412 (also known as Henri De Tonti Boulevard) to its termination into Dowell Road, is experiencing premature failures/distress, due to heavy truck traffic. We estimate that the effected area includes about 9,250 linear feet of existing





asphalt pavement. The purpose of the scope of work outlined in this proposal is to determine the cause of the ongoing failures/distresses and map the current condition of the existing pavement.

No traffic loading information has been provided to us; however, based on the 2018 Master Street Plan, revised on May 23, 2021, we understand that Klenc Road is considered a Collector Street per the City of Tontitown guidelines.

GEOTECHNICAL SCOPE OF SERVICES

Field

The client requests that the subsurface conditions within the planned public roadway be evaluated at seven (7) boring locations. However, to meet the typical standard of care for this type of project, we recommend that we explore the site at **9 boring locations, equally-spaced at 1000 feet on center**, drilled to depths of about 5 feet below existing grades, or until auger refusal material is encountered, whichever is least.

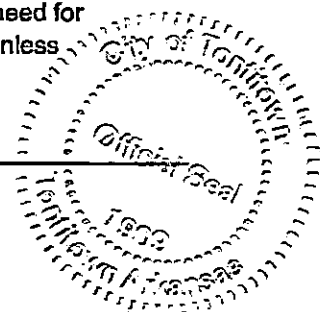
We understand that traffic control services will be required to access the boring locations. GTS will subcontract a traffic control company to provide these services. We have included these fees as a separate line item in this proposal, in the event that the City would prefer to provide these services in-house to reduce the fees.

We propose to core the existing pavement section at each location using an 8-inch diameter diamond-surfaced coring bit initially. The field technician will measure the thickness of the pavement as well as any aggregate base material. After obtaining the 8-inch diameter core samples, the borings will be advanced using continuous flight augers drilled with a rubber-track-mounted drill rig. The split-barrel (Standard Penetration Test) sampling procedure will be used to evaluate the in-situ strength (N-values) and collect soil samples in the subgrade.

The borings will drilled to the maximum depths specified above or to auger refusal, whichever occurs first. Auger refusal is defined as the depth at which no further penetration of the drill rig augers can be gained using mechanical techniques. Based on our knowledge of the regional geology near this site, we do not anticipate encountering auger refusal within the proposed depths; however, chert seams/layers may be encountered, which could result in high N-values.

Groundwater measurements will be taken while drilling and immediately after boring completion. Upon completion of drilling, boring locations will be backfilled with soil cuttings and/or bentonite hole plug. The pavement section will be repaired with cold-patch asphalt or non-shrink grout.

If unexpected soil conditions are encountered, the client will be contacted regarding the need for additional drilling and associated fees. We will not proceed with any additional services unless authorized by the client.





Pavement Condition Evaluation

In order to evaluate the existing condition of the asphalt pavements, we propose to perform a simplified Pavement Condition Index (PCI) Survey of the existing roadway at the project site. The PCI method rates the severity of pavement distress, including surface deformation, cracks, and weathering, and assigns an assessed value. This value in turn is used as part of the evaluation of the existing pavement section strength.

The PCI surveys will include photographing the observed distress, and visually rating the severity of the distress within each sample area. The collected information will be recorded in the field and all data taken back to the GTS office for further compilation and analysis to be included in the geotechnical engineering report. We recommend that this PCI survey be performed during the field services portion of our scope of work as well as 3 to 6 months after the initial survey is performed to determine the rate of pavement distress/failure.

Laboratory

At completion of the field services, the soil and rock samples will be taken to the GTS laboratory. Further laboratory testing on the samples may include moisture content tests, sieve analyses, and Atterberg limits tests. The intent of these tests is to further characterize the engineering properties of the subsurface soils. The number and type of laboratory tests assigned will be dependent on the subsurface conditions encountered at the sample locations.

POTENTIAL DISTURBANCE TO PROPERTY

The client should be aware that the drilling process is necessarily destructive, and that the drilling equipment will require access to the boring locations. GTS will make a reasonable attempt to minimize disturbance to the ground surface during mobilization and/or drilling.

Currently, GTS has not budgeted to restore the site after our borings are performed, other than backfilling the borings and patching the pavement locations as discussed herein.

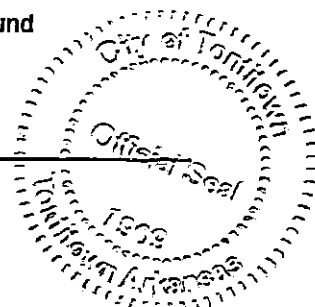
PUBLIC UNDERGROUND UTILITY LOCATIONS

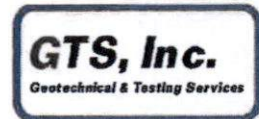
GTS will use the Arkansas One-Call system to mark known public utilities at and near the planned sample locations.

CLIENT'S RESPONSIBILITIES

Private Underground Utility Locations

The client or client representative should make GTS aware of potential private underground structures and utilities at the project site. Because we have no knowledge of private





underground utility locations, we are not responsible for encountering or disrupting private utility lines that are not marked by the Arkansas One-Call system.

Site Access

The client or client's representative should provide GTS personnel access to the project site. The fee shown in this proposal assumes that the project site can be accessed during standard business hours.

Again, GTS has included fees in this proposal for traffic control services. Additionally, we understand that GTS will **not** be responsible for any permits and fees associated with street closure and/or bore permits.

Contact information for any parties requiring notification prior to our work in the right of way should also be provided to GTS if applicable to the project site.

Request for Additional Project Information

If available, please provide GTS with the following information:

- Current and expected traffic count information for this section of roadway.

SCHEDULE

Based on our current workload, and if a significant number of workdays are not lost due to weather, GTS estimates the schedule detailed in the table on the following page. Additionally, verbal recommendations may be provided within 5 days after completion of field services, upon request.

Mobilization to Site	Field Services Duration	Laboratory Testing	Geotechnical Report
<i>Within 4 to 5 Weeks</i>	2 Days	1 week	1 to 2 Weeks
Estimated Total: 6 to 8 Weeks from Authorization to Report Delivery			

GEOTECHNICAL DELIVERABLES

A Geotechnical Engineering Report will be issued for this project. The report will be stamped by a Professional Engineer registered in the State of Arkansas. This report will include a





description of subsurface exploration procedures, laboratory test results and testing procedures, a summary of the subsurface findings, and a boring location diagram.

This report will also include the results of our PCI survey and detail our assessment of the cause(s) of the ongoing pavement distress/failure.

FEES

The following is a breakdown of the estimated fees associated with the proposed scope of services.

Item	Fee	Authorization
Geotechnical Scope (Lump Sum ¹)	\$15,500.00	<input type="checkbox"/>
Traffic Control Services (estimate ²)	\$3,500.00	<input type="checkbox"/>
Total Estimate	\$19,000.00	

¹ The lump sum fee includes the GTS, Inc. engineering services, field testing (including PCI survey), and laboratory testing discussed in the scope of services.

² This estimate includes two (2) days of traffic control. If these services are provided by GTS, they will be invoiced at \$1,750 / day in the final bill, based on the actual days performed.

CLOSING

Thank you for the opportunity to present this proposal. Please let us know if there are questions regarding the information, schedule or fee shown in this proposal. To accept this proposal and authorize GTS to begin work on this project, please sign the Standard Terms and Conditions page, check the appropriate box(es) in the FEES section of this proposal and return - via fax, email or mail - the complete proposal and contract to us.

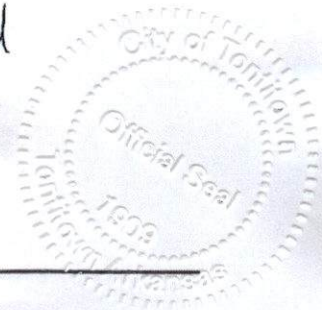
Sincerely,



Nathan Love
Nathan Love, E.I.
Geotechnical Associate

Nathan D. Pamell
Nathan D. Pamell, P.E.
Staff Geotechnical Engineer

Copies: Addressee (clintk@ck-civil.com)





GENERAL CONDITIONS FOR GEOTECHNICAL ENGINEERING SERVICES

1. DEFINITIONS

1.1. Contract Documents. Plans, specifications, and agreements between Client and Contractors, including addenda, amendments, supplementary instructions, and change orders.

1.2. Contractor. The contractor or contractors retained to construct the Project for which Engineer is providing Services under this Agreement.

1.3. Day(s). Calendar day(s) unless otherwise stated.

1.4. Hazardous Materials. The term Hazardous Materials means any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances or pollution.

1.5. Services. The Services provided by Engineer as set forth in this Agreement, the SCOPE OF SERVICES and any written amendment to this Agreement.

1.6. Work. The labor, materials, equipment and services required to complete the work described in the Contract Documents.

2. SCOPE OF SERVICES

Engineer will perform the Services set forth in the attached SCOPE OF SERVICES.

2.1. Changes In Scope. If Engineer provides Client with a writing confirming a change in the SCOPE OF SERVICES, it will become an amendment to this Agreement unless Client objects in writing within 5 business days after receipt. All Services performed by Engineer on the Project are subject to the terms and limitations of this Agreement. If Services are performed, but the parties do not reach agreement concerning modifications to the SCOPE OF SERVICES or compensation, then the terms and limitations of this Agreement apply to such Services, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 19, "Disputes."

2.2. Licenses. Engineer will procure and maintain business and professional licenses and registrations necessary to provide its Services.

2.3. Excluded Services. Engineer's Services under this Agreement include only those Services specified in the SCOPE OF SERVICES.

2.3.1. General. Client expressly waives any claim against Engineer resulting from its failure to perform

recommended additional Services that Client has not authorized Engineer to perform, and any claim that Engineer failed to perform services that Client instructs Engineer not to perform.

2.3.2. Biological Pollutants. Engineer's SCOPE OF SERVICES specifically excludes the investigation, detection, prevention or assessment of the presence of Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, viruses, and/or any of their byproducts. Engineer's SCOPE OF SERVICES will not include any interpretations, recommendations, findings, or conclusions pertaining to Biological Pollutants. Client agrees that Engineer has no liability for any claims alleging a failure to investigate, detect, prevent, assess, or make recommendations for preventing, controlling, or abating Biological Pollutants. Furthermore, Client agrees to defend, indemnify, and hold harmless Engineer from all claims by any third party concerning Biological Pollutants, except for damages caused by Engineer's sole negligence.

3. PAYMENTS TO ENGINEER

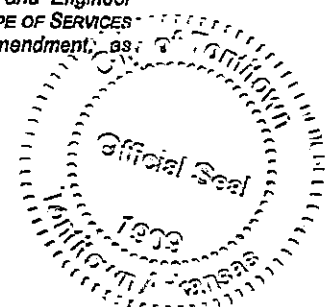
3.1. Basic Services. Engineer will perform all Services set forth in the attached SCOPE OF SERVICES for the amount(s) set forth therein.

3.2. Additional Services. Any Services performed under this Agreement, except those Services expressly identified in the attached SCOPE OF SERVICES, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

3.3. Estimate of Fees. Engineer will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by Engineer. Client recognizes that changes in scope and schedule, and unforeseen circumstances can all influence the successful completion of Services within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the Services will be completed for that amount; rather, it indicates that Engineer shall not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so.

3.4. Rates. Client will pay Engineer at the rates set forth in the FEES SECTION OF THE SCOPE OF SERVICES.

3.4.1. Changes to Rates. Client and Engineer agree that the FEES SECTION OF THE SCOPE OF SERVICES is subject to periodic review and amendment, as





appropriate to reflect Engineer's then-current fee structure. Engineer will give Client at least 30 days advance notice of any changes. Unless Client objects in writing to the proposed amended fee structure within 30 days of notification, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client timely objects to the amended fee structure, and Engineer and Client cannot agree upon a new fee structure within 30 days after notice, Engineer may terminate this Agreement and be compensated as set forth under Section 18, "Termination."

3.4.2. Prevailing Wages. Unless Client specifically informs Engineer in writing that prevailing wage regulations cover the Project and the SCOPE OF SERVICES identifies it as covered by such regulations, Client will reimburse, defend, indemnify and hold harmless Engineer from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorneys' fees.

3.5. Payment Timing; Late Charge. All invoices are due within 30 days after receipt. All amounts unpaid 30 days after the invoice date will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law.

4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES

4.1. Level of Service. Engineer offers different levels of geotechnical engineering Services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive Services yield more information and reduce the probability of error, but at increased cost. Client must determine the level of Services adequate for its purposes. Client has reviewed the SCOPE OF SERVICES and has determined that it does not need or want a greater level of Services than that being provided.

4.2. Standard of Care. Subject to the limitations inherent in the agreed SCOPE OF SERVICES as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Engineer may perform its Services consistent with that level of care and skill ordinarily exercised by other professional engineers practicing in the same locale and under similar circumstances at the time the Services are performed.

4.3. No Warranty. No warranty, express or implied, is included or intended by this Agreement.

5. ESTIMATE OF CONSTRUCTION COSTS

Client acknowledges that construction and Project development are subject to many influences that are not subject to precise forecasting and are outside of Engineer's control. Client further acknowledges that actual costs incurred may vary substantially from the estimates prepared by Engineer and that Engineer does not warrant or guaranty the accuracy of construction or development cost estimates.

6. CONSTRUCTION PHASE SERVICES

If Engineer's SCOPE OF SERVICES includes observation and/or testing during the course of construction, Engineer may:

6.1. Construction Observation.

6.1.1. Site Meetings & Visits. Engineer will participate in job site meetings as requested by Client, and, unless otherwise requested by Client, visit the site at times specified in the SCOPE OF SERVICES or, if not specified in the SCOPE OF SERVICES, at intervals as Engineer deems appropriate to the various stages of construction to observe the geotechnical conditions encountered by Contractor and the progress and quality of the geotechnical aspects of the Work. Based on information obtained during such visits and on such observations, Engineer may inform Client of the progress of the geotechnical aspects of the Work. Client understands that Engineer may not be on site continuously; and, unless expressly agreed otherwise, Engineer will not observe all of the Work.

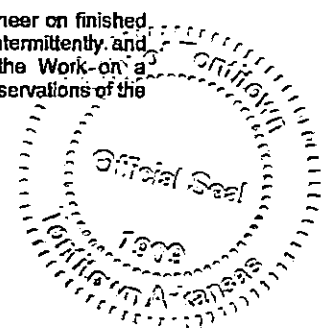
6.1.2. Contractor's Performance. Engineer does not, and cannot, warrant or guarantee that all of the geotechnical Work performed by Contractor meets the requirements of Engineer's geotechnical recommendations or the plans and specifications for such geotechnical Work; nor can Engineer be responsible for Contractor's failure to perform the Work in accordance with the plans, specifications or the recommendations of Engineer.

6.1.3. Contractor's Responsibilities. Engineer will not supervise, direct or have control over the Work nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor for the geotechnical aspects of the Project; for safety precautions and programs incident to the Work; nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor furnishing and performing its Work.

6.1.4. Final Report. At the conclusion of Construction Phase Services, Engineer will provide Client with a written report summarizing the tests and observations, if any, made by Engineer.

6.2. Review of Contractor's Submittals. If included in the SCOPE OF WORK, Engineer will review and take appropriate action on the Contractor's submittals, such as shop drawings, product data, samples, and other required submittals. Engineer will review such submittals solely for general conformance with Engineer's design, and will not include review for the following, all of which will remain the responsibility of the Contractor: accuracy or completeness of details, quantities or dimensions; construction means, methods, sequences or procedures; coordination among trades; or construction safety.

6.3. Tests. Tests performed by Engineer on finished Work or Work in progress are taken intermittently and indicate the general acceptability of the Work on a statistical basis. Engineer's tests and observations of the





Work are not a guarantee of the quality of Work and do not relieve other parties from their responsibility to perform their Work in accordance with applicable plans, specifications and requirements.

7. CLIENT'S RESPONSIBILITIES

In addition to payment for the Services performed under this Agreement, Client agrees to:

7.1. Cooperation. Assist and cooperate with Engineer in any manner necessary and within its ability to facilitate Engineer's performance under this Agreement.

7.2. Representation. Designate a representative with authority to receive all notices and information pertaining to agreement, communicate Client's policies and decisions, and assist as necessary in matters pertaining to the Project and this Agreement. Client's representative will be subject to change by written notice.

7.3. Rights of Entry. Provide access to and/or obtain permission for Engineer to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. Engineer will operate with reasonable care to minimize damage to the Project Site(s). However, Client recognizes that Engineer's operations and the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). The cost of repairing such damage will be borne by Client and is not included in the fee unless otherwise stated.

7.4. Relevant Information. Supply Engineer with all information and documents in Client's possession or knowledge which are relevant to Engineer's Services. Client warrants the accuracy of any information supplied by it to Engineer, and acknowledges that Engineer is entitled to rely upon such information without verifying its accuracy. Prior to the commencement of any Services in connection with a specific property, Client will notify Engineer of any known potential or possible health or safety hazard existing on or near the Project Site, with particular reference to Hazardous Materials or conditions.

7.5. Subsurface Structures. Correctly designate on plans to be furnished to Engineer, the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s), and be responsible for any damage inadvertently caused by Engineer to any such structure or utility not so designated. Engineer is not liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities that were not correctly shown on plans furnished by Client to Engineer.

8. CHANGED CONDITIONS

If Engineer discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), Engineer will notify Client in writing of the Changed Conditions. Client and Engineer agree to that they will then renegotiate in good faith the terms and conditions of this Agreement. If Engineer and Client cannot agree upon amended terms

and conditions within 30 days after notice, Engineer may terminate this Agreement and be compensated as set forth in Section 18, "Termination."

9. HAZARDOUS MATERIALS

Client understands that Engineer's Services under this Agreement are limited to geotechnical engineering and that Engineer has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with Hazardous Materials. Client is solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies, including the potentially affected public, of the existence of any Hazardous Materials located on or in the Project site, or located during the performance of this Agreement. The existence or discovery of Hazardous Materials constitutes a Changed Condition under this Agreement.

10. CERTIFICATIONS

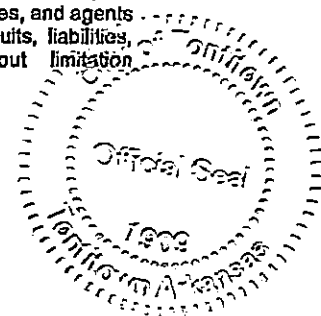
Client agrees not to require that Engineer execute any certification with regard to Services performed or Work tested and/or observed under this Agreement unless: 1) Engineer believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) Engineer believes that the Services performed or Work tested and/or observed meet the criteria of the certification; and 3) Engineer has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by Engineer is limited to an expression of professional opinion based upon the Services performed by Engineer, and does not constitute a warranty or guaranty, either expressed or implied.

11. ALLOCATION OF RISK

11.1. Limitation of Liability. The total cumulative liability of Engineer, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "Engineer Entities"), to Client arising from Services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by Engineer under this Agreement or \$50,000 whichever is greater; provided, however, that such liability is further limited as described below. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in Engineer's Services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written request, Engineer and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in Engineer's fee, provided that they amend this Agreement in writing as provided in Section 20.

11.2. Indemnification.

11.2.1. Indemnification of Client. Subject to the provisions and limitations of this Agreement, Engineer agrees to indemnify and hold harmless Client, its shareholders, officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation





reasonable attorney's fees and costs of defense), or other losses (collectively "Losses") to the extent caused by Engineer's negligent performance of its Services under this Agreement.

11.2.2. Indemnification of Engineer. Except as governed by Arkansas law regarding the immunity of municipalities, Client will indemnify and hold harmless Engineer Entities from and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Engineer's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Engineer Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

11.3. Consequential Damages. Neither Client nor Engineer will be liable to the other for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

11.4. Continuing Agreement. The indemnity obligations and the limitations of liability established under this Agreement will survive the expiration or termination of this Agreement. If Engineer provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify each other and the limitations on liability established under this Agreement apply to such Services as if the parties had executed an amendment.

12. INSURANCE

12.1. Engineer's Insurance. Engineer will obtain, if reasonably available, the following coverages:

12.1.1. Statutory Workers' Compensation/Employer's Liability Insurance;

12.1.2. Commercial General Liability Insurance with a combined single limit of \$1,000,000;

12.1.3. Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and,

12.1.4. Professional Liability Insurance in amounts of \$1,000,000 per claim and annual aggregate.

12.2. Contractor's Insurance. Client shall require that all Contractors and subcontractors for the Project name Engineer as an additional insured under their General Liability and Automobile Liability insurance policies. If Client is not the Project owner, Client will require the Project owner to require the owner's

Contractor to purchase and maintain General Liability, Builder's Risk, Automobile Liability, Workers' Compensation, and Employer's Liability Insurance with limits no less than as set forth above, and to name Engineer and its subcontractors and subconsultants as additional insureds on the General Liability insurance.

12.3. Certificates of Insurance. Upon request, Engineer and Client will each provide the other with certificate(s) of Insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance, all policies required herein shall contain a waiver of subrogation.

13. OWNERSHIP AND USE OF DOCUMENTS

13.1. Client Documents. All documents provided by Client will remain the property of Client. Engineer will return all such documents to Client upon request, but may retain file copies of such documents.

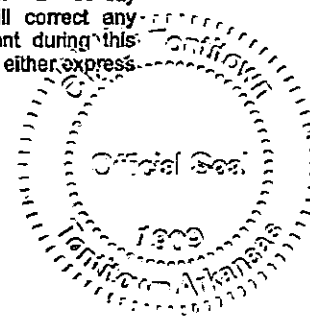
13.2. Engineer's Documents. Unless otherwise agreed in writing, all documents and information prepared by Engineer or obtained by Engineer from any third party in connection with the performance of Services, including, but not limited to, Engineer's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively "Documents") are the property of Engineer. Engineer has the right, in its sole discretion, to dispose of or retain the Documents.

13.3. Use of Documents. All Documents prepared by Engineer are solely for use by Client and will not be provided by either party to any other person or entity without Engineer's prior written consent.

13.3.1. Use by Client. Client has the right to reuse the Documents for purposes reasonably connected with the Project for which the Services are provided, including without limitation design and licensing requirements of the Project.

13.3.2. Use by Engineer. Engineer retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services and the right to use the Documents for any purpose.

13.4. Electronic Media. Consultant may agree to Client's request to provide Documents and information in an electronic format. Client recognizes that Documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration due to (among other causes) transmission, conversion, media degradation, software error, or human alteration. Accordingly, all Documents and information provided by Consultant in electronic media are for informational purposes only and not as final documentation. Unless otherwise defined in the Scope of Services, Consultant's electronic Documents and media will conform to Consultant's standards. Consultant will provide any requested electronic Documents for a 30-day acceptance period, and Consultant will correct any defects reported by Client to Consultant during this period. Consultant makes no warranties, either express





or implied, regarding the fitness or suitability of any electronic Documents or media.

13.5. Unauthorized Reuse. No party other than Client may rely, and Client will not represent to any other party that it may rely on Documents without Consultant's express prior written consent and receipt of additional compensation. Client will not permit disclosure, mention, or communication of, or reference to the Documents in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material without Consultant's express prior written consent. Client waives any and all claims against Consultant resulting in any way from the unauthorized reuse or alteration of Documents by itself or anyone obtaining them through Client. Client will defend, indemnify and hold harmless Consultant from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained Documents provided to such person or entity, published, disclosed or referred to without Consultant's prior written consent.

14. SAMPLES AND CUTTINGS

14.1. Sample Retention. If Engineer provides laboratory testing or analytic Services, Engineer will preserve such soil, rock, water, or other samples as it deems necessary for the Project, but no longer than 45 days after issuance of any Documents that include the data obtained from these samples. Client will promptly pay and be responsible for the removal and lawful disposal of all contaminated samples, cuttings, Hazardous Materials, and other hazardous substances.

14.2. Monitoring Wells. Client will take custody of all monitoring wells and probes installed during any investigation by Engineer, and will take any and all necessary steps for the proper maintenance, repair or closure of such wells or probes at Client's expense.

15. RELATIONSHIP OF THE PARTIES

Engineer will perform Services under this Agreement as an independent contractor.

16. ASSIGNMENT AND SUBCONTRACTS

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Engineer may subcontract for the services of others without obtaining Client's consent if Engineer deems it necessary or desirable for others to perform certain Services.

17. SUSPENSION AND DELAYS

17.1. Procedures. Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by Engineer. Engineer may terminate this Agreement if Client suspends Engineer's Services for more than 60 days and Client will pay Engineer as set forth under Section 18, "Termination." If Client suspends Engineer's Services, or if Client or others delay

Engineer's Services, Client and Engineer agree to equitably adjust: (1) the time for completion of the Services; and (2) Engineer's compensation in accordance with Engineer's then current SCHEDULE OF CHARGES for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by Engineer for demobilization and subsequent remobilization.

17.2. Liability. Engineer is not liable to Client for any failure to perform or delay in performance due to circumstances beyond Engineer's control, including but not limited to pollution, contamination, or release of hazardous substances, strikes, lockouts, riots, wars, fires, flood, explosion, "acts of God," adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market.

18. TERMINATION

18.1. Termination for Convenience. Engineer and Client may terminate this Agreement for convenience upon 30 days written notice delivered or mailed to the other party.

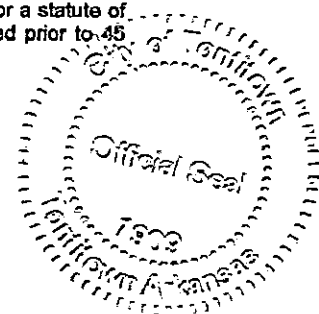
18.2. Termination for Cause. In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party. The termination notice shall state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 10-day period.

18.3. Payment on Termination. Following termination other than for Engineer's material breach of this Agreement, Client will pay Engineer for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with Engineer's then current FEES SECTION OF THE SCOPE OF SERVICES.

19. DISPUTES

19.1. Mediation. All disputes between Engineer and Client are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice.

19.2. Precondition to Other Action. No action or suit may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice.





19.3. Choice of Law; Venue. This Agreement will be construed in accordance with and governed by the laws of the state in which the Project is located. Unless the parties agree otherwise, any mediation or other legal proceeding will occur in the state in which the Project is located.

19.4. Statutes of Limitations. Any applicable statute of limitations will be deemed to commence running on the earlier of the date of substantial completion of Engineer's Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

20. MISCELLANEOUS

20.1. Integration and Severability. This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.

20.2. Modification of this Agreement. This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

20.3. Notices. Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this Agreement.

20.4. Headings. The headings used in this Agreement are for convenience only and are not a part of this Agreement.

20.5. Waiver. The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach.

