



January 25, 2002
003-00283-000-PR01

Mr. Ernie Stickler
Public Utilities Superintendent
Municipal Building
202 West Main Street
Mason, Ohio 45050

Re: Proposal-Geotechnical and Environmental Engineering Services
Proposed Mason WRP Improvements
MAS9900-002-B1
Mason, Ohio

Dear: Mr. Stickler:

BBC&M Engineering, Inc. (BBC&M) is pleased to submit a proposal to perform a Geotechnical Investigation and a Wetlands Delineation for the proposed Water Reclamation Facility to be located along Mason-Morrow-Millgrove Road in Mason, Ohio. This proposal was prepared based on the Request for Proposal (RFP) prepared by Finkbeiner Pettis & Strout, Inc. (FPS), and dated January 14, 2002.

PROJECT DESCRIPTION

Based on the provided RFP, a new 13.0 MGD Water Reclamation Plant is to be constructed on an undeveloped piece of property that is located along the north side of Mason-Morrow-Millgrove Road, the west and northwest sides of the property are bound by Muddy Creek. The new facility will include construction of; single and multi-story buildings with and without basements, reinforced concrete tanks, pump stations, sewer lines, pavements, etc. A discussion of the anticipated foundation elevations indicates that many of the structures will be constructed at depths of between 10 and 30 feet below the existing ground surface elevations. The maximum foundation loads will be less than 2000 psf. A Preliminary Site Plan was included with the RFP that depicts the plant layout and the proposed test boring layout.

GEOSCIENCES & MATERIALS ENGINEERING

6190 ENTERPRISE COURT, DUBLIN, OHIO 43016-7297	(614) 793-BBCM(2226)	FAX (614) 793-2410
33977 CHARDON ROAD, WILLOUGHBY HILLS, OHIO 44094-9144	(440) 585-9995	FAX (440) 585-3214
11699 CHESTERDALE ROAD, CINCINNATI, OHIO 45246-3917	(513) 771-8471	FAX (513) 771-8475

GEOTECHNICAL INVESTIGATION

Scope Modification

The provided RFP included a preliminary test boring layout, boring depths and corresponding soil and rock core sampling/testing. Based on our review of the anticipated structure types and the various foundation depths, in conjunction with the available geologic data for the project site, BBC&M suggests that the proposed scope of investigation be altered. In general, the proposed number and location of the suggested borings seem appropriate for the project. However, it is anticipated that shale and limestone bedrock will be encountered prior to reaching the suggested boring depths. Therefore, we recommend that the boring depths be modified to account for the anticipated bedrock elevations across the site, yet still provide the necessary information for design and construction of the various structures. For this, we recommend that the majority of the borings be advanced to relative refusal conditions on bedrock (anticipated to be less than 20 feet) and selected borings be extended to the suggested minimum depths utilizing rock coring techniques. The borings drilled for single-story structures without basements will be terminated at a maximum depth of 15 feet, unless conditions warrant otherwise.

Field Work

BBC&M proposes to perform the 32 borings suggested in the RFP. It is understood that the boring locations will be marked in the field by FPS and that the corresponding ground surface elevations will be provided to BBC&M. As described above, the majority of the borings will be advanced to achieve relative refusal conditions in bedrock. The anticipated total lineal footage of soil drilling is 580 linear feet. In addition, rock coring will be performed at approximately 4 boring locations for this investigation. The rock coring is anticipated to include core runs of between 5 and 25 feet into the bedrock for a total of 70 linear feet.

BBC&M will contact the Ohio Utilities Protection Service (OUPS) at least 48 hours before initiation of drilling. It is possible that utility lines not located by OUPS may exist in the area of the proposed construction. Therefore, the owner must advise BBC&M of the locations of known or suspected underground features that could affect the services provided. In order to avoid weather related delays due to wet soil conditions, we propose to perform this work with an ATV mounted drilling rig.

BBC&M will have the requested borings drilled, and the work will be continuously supervised by experienced personnel from this office. Our personnel will perform the following duties in the field: 1) implement appropriate drilling and sampling procedures depending on the

conditions being encountered; 2) visually identify all recovered samples and prepare a log of each boring; 3) preserve all samples in airtight glass jars for transportation to our laboratory; 4) make seepage and groundwater observations; 5) make hand-penetrometer measurements in the soils exhibiting cohesion; and, 6) provide close liaison between the field work and the Engineer so that the program can be modified in the event that unusual or unexpected conditions are encountered.

Disturbed soil samples will be attempted at regular intervals using a 2-inch O.D. split-barrel sampler driven by blows from a 140-pound hammer freely falling 30 inches (Standard Penetration Test). It is planned to obtain the disturbed samples at 2.5-foot intervals to a depth of 10 feet and then at 5-foot-intervals thereafter. If deposits of soft or weaker soils are encountered, "Shelby" tube samples will be attempted in accordance with ASTM D-1587. If Shelby tube samples are collected, the ends will be cleaned and sealed in wax for transportation to our laboratory, where they will be extruded, and the soils will be identified and classified. For this proposal, we plan on retrieving two undisturbed soil samples that will be utilized for triaxial shear testing. Upon completion of drilling, the borings will be backfilled with the soil cuttings.

It is assumed that free right-of-access will be granted to BBC&M personnel. Exploration equipment may unavoidably disturb, alter, or damage the existing vegetation and terrain at the Property. BBC&M will take reasonable precautions to limit possible damage, but will accept no responsibility to restore the Property to its original conditions unless specific arrangements and reimbursement are contractually agreed upon prior to initiation of our field work.

Laboratory

In the laboratory, a testing program will be assigned and supervised by the Project Engineer. Basic identification tests will be performed on representative samples. The laboratory testing program will include; moisture content determinations, Atterberg Limit tests and gradation analyses. The laboratory program will also include strength testing of the undisturbed soil samples and portions of the rock cores. The results of these tests will provide information for definitive identification of the encountered soil and bedrock, as well as for developing an approximation of their strength and consolidation characteristics by comparison to existing data.

Report

Field information and the results of the laboratory testing program will provide the basis for analyses and recommendations which will be contained in an engineering report. The report will include the following items:

- Descriptions of the Property, the field work performed, and general subsurface conditions;
- A discussion of the soil and bedrock profile across the site and the impact that the bedrock depth may have on construction of the deeper structures;
- Anticipation of the impact of the groundwater on construction activity and the proposed structures;
- Recommendations for foundation type and allowable bearing pressures;
- An estimate of foundation settlement and a discussion of any anticipated potential problems, if predicted;
- Recommendations for lateral earth pressure design associated with below grade foundations walls;
- Recommendations for placement of engineered fill;
- Recommendations for seismic site coefficient;
- Subgrade modulus recommendations for use in the design of pavements; and,
- An appendix which will include a Vicinity Map, Plan of Borings, logs of the borings, and laboratory test results.

Five copies of the Subsurface Investigation report will be submitted for your use and distribution.

Work Schedule and Cost Estimate

BBC&M anticipates that the field work could commence within one (1) week of receiving authorization to proceed. We estimate that the field work will require approximately five (5) days to complete and that preliminary information could be provided to the project structural and civil engineers immediately following the completion of the field work. The final report could be submitted approximately three (3) weeks after completion of the borings. If that is not satisfactory to your schedule, please contact us and we will discuss your scheduling needs.

BBC&M proposes to perform the scope of work described herein for a **lump sum fee of \$16,400**. Unexpected conditions encountered during the exploration program might suggest the need for additional work; however, we will not undertake the work or exceed the proposed lump sum fee without prior authorization from your office.

An invoice for our services will be submitted following the completion of the field work (approximately 60 percent of the total) and the final invoice will be submitted at the completion of the final report. All invoices are payable within 30 days of receipt. The fee quoted in this proposal is valid for a period of six (6) weeks after the submittal date. After that time, BBC&M reserves the right to modify the fee, as necessary. All work performed under this Agreement will be subject to the attached BBC&M Terms and Conditions, Rev. 4/01, which are hereby incorporated into and made a part of this Agreement. **Your acceptance of this proposal also indicates, unless otherwise noted, that BBC&M personnel and equipment are granted free right of access in accordance with Article 2 of the attached Terms and Conditions and that any affected property owners and/or occupants have been notified of our permission to enter the property.**

WETLAND DELINEATION SERVICES

In accordance with the request of Finkbeiner, Pettis & Strout, Inc. (FPS), BBC&M Engineering, Inc. (BBC&M) is pleased to provide a proposal to perform Wetland Delineation services for the proposed 13 million gallons per day (MGD) Water Reclamation Plant in Mason, Ohio (the "site").

According to the Clean Water Act (CWA), prior to initiating a "discharge" of dredge or fill material to "jurisdictional waters of the U.S." (including wetlands, lakes, ponds, rivers, streams, etc.), a CWA Section 404 permit must be acquired from the U.S. Army Corps of Engineers (ACOE) and a CWA Section 401 water quality certification must be acquired from the Ohio Environmental Protection Agency (EPA).

On January 9, 2001, the U.S. Supreme Court issued a decision in the case of Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et. al. (Slip Opinion No. 99-1178, October Term, 2000) indicating that isolated waters could not be designated jurisdictional waters of the U.S. based on the "Migratory Bird Rule". Therefore, in some cases, isolated waters might not be subject to CWA Section 404/401 regulation. However, in accordance with Ohio Revised Code (ORC) 6111.021, an isolated wetlands permit must be acquired from Ohio EPA prior to "filling" of an "isolated wetland" in Ohio.

The scope of BBC&M's Wetland Delineation services are summarized as follows:

Preliminary Wetland Delineation

The purpose of the Preliminary Wetland Delineation (PWD) is to delineate the approximate location, boundaries, and areal extent of jurisdictional waters of the U.S. and/or potential "isolated wetlands" on the site, except for wetlands that are located in "agricultural areas" (if any). If verified by the U.S. Army Corps of Engineers (refer to the next section of this proposal), the PWD will constitute regulatory-approved documentation of the existence, location and extent of jurisdictional waters of the U.S. on the site, and can be used to fulfill one requirement of the Section 404/401 authorization process and/or isolated wetland permit process (if necessary).

The PWD will be conducted in general accordance with the Routine On-Site Determination method described in the "Corps of Engineers Wetland Delineation Manual" published by the ACOE in 1987. During the PWD, BBC&M will conduct the following tasks:

- 1) review publicly available published resources (e.g. county soil survey, National Wetland Inventory (NWI) maps, U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle maps, etc.);
- 2) visually observe soil samples collected from exploration points on non-agricultural portions of the site for hydric soil indicators (gleying, low matrix chroma, etc.);
- 3) attempt to identify the dominant plant species in the vicinity of each exploration point;
- 4) visually observe hydrologic conditions at each exploration point for indicators of wetland hydrology (e.g. inundation, sediment deposits, etc.);
- 5) mark the approximate boundaries of jurisdictional wetlands with plastic flagging;
- 6) visually observe the site for evidence of other jurisdictional waters of the U.S. (rivers, streams, lakes, ponds, etc.);
- 7) estimate the approximate extent of on-site jurisdictional waters of the U.S. and/or isolated wetlands based on preliminary field measurements and other ancillary data (aerial photographs, topographic maps, etc.);
- 8) complete Ohio Rapid Assessment Method (ORAM - version 5.0) worksheets for each

wetland area;

- 9) review the Ohio Water Quality Standards (OAC 3745-1) to evaluate whether use designations have been assigned to on-site jurisdictional streams; and,
- 10) prepare a PWD report to summarize the procedures and results of the investigation.

Five copies of the PWD report will be submitted for your use and distribution. Items that will not be included in the PWD are ACOE verification, NRCS Wetland Determination, CWA Section 404/401 and/or isolated wetland permitting, or stream/wetland mitigation. Professional surveying is not proposed at this time; however, please note that ACOE and/or Ohio EPA will probably require a professional survey of jurisdictional waters of the U.S. and/or isolated wetlands before completion of the Section 404/401 authorization permitting process and/or isolated wetland permit process.

ACOE Verification

The ACOE has ultimate authority to determine and/or verify the existence and/or extent of jurisdictional waters of the U.S.; therefore, the PWD will be termed "preliminary" until the ACOE verification process is completed. Please note that an ACOE-verified delineation is regulatory documentation of the existence and/or extent of jurisdictional waters of the U.S. on the site. Furthermore, if there are proposed discharges of dredge or fill material to jurisdictional waters of the U.S. and/or isolated wetlands on the site, the ACOE and/or Ohio EPA will likely require an ACOE-verified delineation before issuing CWA Section 404/401 authorization and/or an isolated wetland permit for the proposed discharges. An ACOE verification is valid for a period of five years unless new information warrants revision of the delineation.

BBC&M proposes to conduct the following tasks:

- 1) A copy of the PWD report will be submitted to the ACOE along with a written request for ACOE verification of the PWD.
- 2) A representative of BBC&M will meet with an ACOE representative at the site. *← City/Eng*
- 3) If revisions to the PWD are required by the ACOE, an addendum or revised report would be prepared and submitted to the ACOE and you.

NRCS Certified Wetland Determination

In accordance with a 1994 Memorandum of Agreement (MOA) between the U.S. Department of Agriculture (USDA), U.S. EPA, U.S. Department of the Interior (DOI), and U.S. Department of the Army, the NRCS has authority to determine the existence and extent of jurisdictional wetlands located in agricultural areas that are subject to regulation under the Food Security Act (FSA). These delineations - conducted by the NRCS in accordance with guidelines contained in the "National Food Security Act Manual" (NFSAM) published by the USDA - are commonly referred to as "wetland determinations" and may be relied upon by the ACOE, U.S. EPA, and Ohio EPA for the Section 404/401 authorization process. It is understood that NRCS wetland determinations for agricultural areas are based on status of the area as it existed in 1985. Areas designated farmed wetland (FW) in an NRCS-certified wetland determination are jurisdictional waters of the U.S. and are subject to CWA regulations. Areas designated prior-converted/non-wetland (PC/NW) in an NRCS-certified wetland determination are not jurisdictional waters of the U.S.; however, if the ACOE determines that jurisdictional wetland criteria are/were present in an "abandoned" PC/NW area, the ACOE can determine that the area is a jurisdictional water of the U.S., even if the area is/was used for agricultural purposes after abandonment.

According to the MOA, agricultural areas are "lands intensively used and managed for the production of food and fiber to the extent that the natural vegetation has been removed and cannot be used to determine whether the area meets applicable hydrophytic vegetation criteria in making a wetland delineation." Examples include "intensively used and managed cropland, hayland, pasture land, orchards, vineyards, and areas which support wetland crops".

Please note that the ACOE will likely require an NRCS certified wetland determination for the agricultural portions of the site for the CWA Section 404/401 authorization process (if necessary). Therefore, if authorized, BBC&M would submit a request to the County NRCS office for completion of a certified wetland determination for the agricultural portions of the site. At minimum, the request would include the following:

- 1) Site description.
- 2) Vicinity Map (USGS, 1"=2,000').
- 3) A copy of form NRCS-CPA-38 signed by the current site owner(s). It is assumed that the City of Mason will assist BBC&M in obtaining the signatures of owners of parcels that have agricultural areas.
- 4) A copy of a portion of the County soil survey map with coverage of the site.
- 5) A copy of an aerial photograph with site boundaries indicated.

Cost Estimate and Work Schedule

It is proposed to conduct the scope of services for the following lump sum fees:

Preliminary Wetland Delineation	Lump Sum Fee of \$2,200
ACOE Wetland Verification	Lump Sum Fee of \$700
NRCS Determination	Lump Sum Fee of \$500

The Wetland Delineation services can be initiated immediately (weather permitting) upon receipt of authorization to proceed. BBC&M will attempt to submit the PWD report within two weeks after completion of field work. Preliminary, verbal information can be provided after completion of field work.

Generally, the ACOE Verification process requires one to three months for completion, and the NRCS Wetland Determination process requires three to six months for completion, depending on the workload and availability of representatives from those agencies.

Please note that snow cover can limit and/or eliminate visibility of site features, and frozen surface soils make sample collection and/or augering into the soil difficult and time consuming. Therefore, BBC&M proposes to conduct the field work at our discretion, and as soon as practical during thawing conditions.

Terms and Conditions

All work will be conducted in accordance with the attached BBC&M Terms and Conditions, Rev. 4/01, which are hereby made part of this agreement. This proposal includes field work requiring access to the site by our personnel. Your acceptance of this proposal indicates, unless otherwise noted, that BBC&M is granted free right of access in accordance with Article 2 of the attached Terms & Conditions and that the property owners and occupants have been notified of our permission to enter the site.

The reports prepared for this project will be intended solely for the use of the City of Mason and Finkbeiner, Pettis & Strout, Inc., and may not be relied upon by or disseminated to any third person or entity, other than appropriate regulatory agencies, or commercial financial institution or other lender providing financing for the acquisition or improvement of the site subject to the reports at the time the reports are issued, without the express written permission of BBC&M. The cost to have other entities rely on the reports will be \$500 per entity. In addition to the \$500 fee, the entity must accept, in writing, the BBC&M Terms and

Conditions, Rev. 4/01, which are part of this agreement.

An invoice for our services will be submitted following the completion of the field work (approximately 60 percent of the total) and the final invoice will be submitted at the completion of the final report. All invoices are payable within 30 days of receipt. The fee quoted in this proposal is valid for a period of six (6) weeks after the submittal date. After that time, BBC&M reserves the right to modify the fee, as necessary. All work performed under this Agreement will be subject to the attached BBC&M Terms and Conditions, Rev. 4/01, which are hereby incorporated into and made a part of this Agreement. **Your acceptance of this proposal also indicates, unless otherwise noted, that BBC&M personnel and equipment are granted free right of access in accordance with Article 2 of the attached Terms and Conditions and that any affected property owners and/or occupants have been notified of our permission to enter the property.**

We are pleased to have been given the opportunity to submit this proposal. If our proposal meets with your approval, please indicate your acceptance by returning one signed copy to our office. If you have any questions, do not hesitate to contact our office at (513) 771-8471.

Respectfully Submitted,

BBC&M ENGINEERING, INC.
Cincinnati, Ohio Office



Anthony P. Amico, P.E.
Branch Manager/Senior Engineer

Submitted: 2 copies

Copy: Leslie Ostrozny; Finkbeiner Pettis & Strout, Inc.

Enclosure: BBC&M Engineering, Inc., Terms and Conditions, Rev., 4/01

PROPOSAL - ENGINEERING SERVICES
PROPOSED MASON WRP IMPROVEMENTS
MASON, OHIO

Please signify the authorized portions of work by checking the appropriate line(s).

- | | |
|--|---------------------------------|
| <input type="checkbox"/> Geotechnical Investigation | - Lump Sum Fee: \$16,400 |
| <input type="checkbox"/> Preliminary Wetlands Delineation | - Lump Sum Fee: \$2,200 |
| <input type="checkbox"/> ACOE Wetland Verification | - Lump Sum Fee: \$700 |
| <input type="checkbox"/> NRCS Determination | - Lump Sum Fee: \$500 |

ACCEPTED BY:

SIGNATURE:

TITLE:

DATE:

Proposal Geotechnical and Environmental Engineering Services (003-00283-000-PR01)
Proposed Mason WRP Improvements - Mason, Ohio
BBC&M ENGINEERING, INC. - Cincinnati, Ohio

1. SCOPE OF SERVICES

BBC&M ENGINEERING, INC. hereinafter called "BBC&M" shall perform the services defined in the proposal and shall invoice the client at the unit prices or fixed fee as specified in the proposal. BBC&M shall provide additional services under this agreement as requested by the CLIENT and shall invoice the CLIENT for these additional services at the rates or revised fee as indicated by the proposal. It is understood that the nature and scope of the services set forth in the proposal and the rate or fee agreed upon for performing such services is based upon information provided by the CLIENT. If unexpected site conditions are encountered which increases the cost of BBC&M's work beyond that contemplated in the accepted proposal or if such conditions require additional services beyond the defined scope of work, BBC&M will make a reasonable effort to promptly contact the CLIENT. Additional work beyond that contained in the accepted proposal shall be performed by BBC&M only upon authorization by the CLIENT, and the CLIENT'S agreement to compensate BBC&M at its accepted rate for such additional work.

2. RIGHT OF ACCESS

Free right-of-access shall be granted to the personnel of BBC&M Engineering, Inc. and their subcontractors. Exploration equipment may unavoidably disturb, alter or damage the existing vegetation and terrain at the site. BBC&M Engineering, Inc. and its subcontractors will take reasonable precautions to limit possible damage, but shall not be liable for such damage and will accept no responsibility to restore the site to its original conditions unless specific arrangements and reimbursement are contractually agreed upon prior to the initiation of our field work.

3. UTILITIES

It is possible that utility lines may exist in the area of the proposed project. CLIENT shall provide data which the CLIENT reasonably believes to be accurate as to the location of all underground, pipes, cables, conduits, tanks or structures. BBC&M will exercise reasonable caution to avoid damage or injury to utilities or subterranean structures during the prosecution of this work. CLIENT agrees to defend, indemnify and hold harmless from any claim allegedly arising from BBC&M's damaging underground utilities or other man-made objects that were not called to BBC&M's attention or which were not properly located on plans furnished to BBC&M.

4. SAMPLES

All soil samples from borings and bulk flowability studies will be stored in our laboratory for 90 days and will be discarded at the end of the 90 day period unless alternative storage periods are specifically stated in the proposal. In the event that samples contain or may contain hazardous materials, BBC&M shall, after completion of testing and at CLIENT'S expense, return such samples to CLIENT or using a manifest signed by CLIENT as generator, have such samples transported to a location selected by CLIENT for final disposal. CLIENT recognizes and agrees that BBC&M is acting as a bailee and at no time assumes title to the samples.

5. ENVIRONMENTAL ISSUES

It is understood and agreed that this contract does not contemplate the handling of or the design including asbestos or any hazardous waste material. The CLIENT agrees to notify BBC&M of hazardous materials known or suspected to exist at the project site prior to or after the execution of this agreement. The CLIENT agrees to hold-harmless and indemnify BBC&M for all claims arising from encountering of unanticipated asbestos or any hazardous waste material. BBC&M and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services.

It shall be the responsibility of the CLIENT to notify the appropriate federal, state, or local public agencies as required by law, or otherwise, to disclose in a timely manner any information that may be necessary to prevent any danger to health, safety, to the environment resulting from the performance of Services at or the operation of the site. CLIENT shall be solely responsible for the containment, encapsulation, remediation, cleanup, transportation and disposal of any hazardous substance detected or found to exist at the site.

6. CONSTRUCTION MONITORING

Construction monitoring shall consist of visual observation or physical testing of materials, equipment or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents. Such monitoring shall not be construed as relieving the parties under contract in any way from their obligations and responsibilities under the construction contract. Specifically, monitoring shall not require BBC&M to assume responsibilities for the means and methods of construction.

7. STANDARDS COMPLIANCE

BBC&M will perform certain services for this project in light of various standard practices or standard guides such as ASTM or other, similar organizations. Because such standards are, of necessity, based upon a wide array of significant assumptions, BBC&M reserves the right to exercise professional judgment to accommodate the unique site, project, CLIENT'S preferred risk management criteria, and BBC&M's fundamental duty to preserve and protect public health, safety, and welfare.

8. CONSTRUCTION SAFETY

It is understood and agreed that BBC&M has no constructive use of the Owner's site; has no control or authority over the means, methods, and sequences of construction; and therefore, has no ongoing responsibility whatsoever for construction safety, beyond it's own personnel.

9. COMPUTER AIDED DRAFTING AND DESIGN LIMITATIONS

Electronic data and drawing files, submitted as part of this agreement are compatible with the most current version of AutoCAD or Microstation being utilized at BBC&M; operating on an IBM-compatible PC using Windows. Unless otherwise agreed upon prior to authorization of services, BBC&M reserves the right to submit the data in a format determined by BBC&M. BBC&M makes no representation as to the compatibility of these files beyond the version of software being utilized. Electronic data files are submitted to CLIENT, to review both format and content, for a 30 day acceptance period. During this period, the CLIENT may review and examine these files and any errors detected during this time will be corrected by BBC&M as part of the scope of services of this agreement. Any changes requested after the acceptance period will be considered additional services to be performed on a unit rate basis, at the BBC&M's current standard hourly rate schedule.

10. CONSTRUCTION COST AND TIME ESTIMATES

BBC&M is not a construction cost estimator or construction contractor. BBC&M's opinion of probable construction cost will be based solely upon its own experience and familiarity with the construction industry. BBC&M is required to make a number of assumptions as to specific site conditions, methods of construction and market conditions over which BBC&M has no control. BBC&M does not guarantee that proposals, bids, or construction costs will not vary from opinions of probable cost prepared under this agreement.

11. PERMITS AND APPROVALS

When identified in the Scope of Services, BBC&M shall assist the CLIENT in applying for and obtaining permits and approvals typically required by law for projects similar to the one for which BBC&M's services are being engaged. Assistance in applying for permit applications by BBC&M does not guarantee approval of the permits by the jurisdictional regulatory authorities. This assistance shall also not extend to the preparation of research studies, special documentation, special tests, development and delivery of testimony, or any other action which may be required to obtain regulatory approval. These services shall be compensated for as additional services.

12. LIMITATION OF LIABILITY

BBC&M's total aggregate liability to CLIENT, its shareholders, directors, officers, employees and agents, and any subcontractors of CLIENTS, arising from BBC&M's acts, errors or omissions, shall not exceed \$50,000 or BBC&M's total fee for the services rendered on this project, whichever is greater. BBC&M cannot take any responsibility for the adequacy of its design, specifications or design recommendations unless his work includes construction monitoring necessary to determine whether or not the work is in substantial compliance with design, specifications, design recommendations. In no event shall BBC&M be responsible for any consequential damages arising from any act or omission of BBC&M under this agreement.

13. OWNERSHIP OF DOCUMENTS

CLIENT acknowledges BBC&M's reports, plans specifications, logs of exploration, test results, and calculations, including electronic media, as instruments of professional service, not products. These documents are and shall remain the sole and exclusive property of BBC&M. The CLIENT agrees to hold-harmless and indemnify BBC&M against all claims arising out of any reuse of these documents without written authorization of BBC&M.

BBC&M reserves the right to remove all indicia of its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by BBC&M in CADD form only for information and use by the CLIENT for the specific purpose for which BBC&M was engaged. Said materials shall not be used by CLIENT, or transferred to another party, for use in other projects, additions to current project, or any other purpose for which the material was not strictly intended by BBC&M without BBC&M's express written permission. Any unauthorized modification or reuse of the materials shall be at CLIENT'S sole risk, and CLIENT agrees to defend, indemnify, and hold BBC&M harmless from all claims, arising out of the unauthorized modification or use of these materials.

14. STANDARD OF CARE

BBC&M will strive to perform its services in accordance with the reasonable current professional standards for consultants undertaking similar studies under like circumstances. BBC&M makes no other warranty, express or implied, concerning any report, data, operation or document provided to CLIENT by BBC&M under this Agreement, or concerning the site or the presence of any hazardous substance thereon, and shall not be responsible for consequential or incidental damages sustained by any party in connection therewith.

16. PAYMENT

CLIENT will be invoiced monthly, and at the end of the project, for services and expenses. Invoices will be due and payable within 30 days of receipt. Past due amounts are subject to a service charge of 1.5% per month (18% per annum) on the outstanding balance. Attorney fees and other costs, incurred in collecting past due amounts shall be paid by the CLIENT. BBC&M also reserves the right to terminate its services for failure of CLIENT to make payments in accordance with the provisions of this Agreement. The CLIENT'S obligation to pay for Services contracted in this agreement is in no way dependent upon the CLIENT'S ability to obtain financing, payment, approval of governmental or regulatory agencies, or upon the CLIENT'S successful completion of the Project. BBC&M reserves the right to retain possession of CLIENT'S documents until payment is made in accordance with the terms of this Agreement. No retainage of payment for services performed by BBC&M is to be held by CLIENT.

16. CONFIDENTIALITY

BBC&M agrees to maintain the confidentiality of the work performed under this agreement, and shall not disclose any such information to any party other than the CLIENT without the express written or oral authorization of CLIENT.

17. DELAY AND FORCE MAJEURE

In the event that BBC&M's field work is interrupted due to unusual or unanticipated causes outside of its control, BBC&M shall be compensated for the additional labor, equipment, and other costs associated with maintaining its work force and equipment availability during such interruption, or at the option of the CLIENT, for such similar charges that are to be incurred by BBC&M for demobilization and subsequent remobilization.

Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by force majeure, acts of GOD, or other events beyond control of either party which could not have been reasonably foreseen or prevented. Such acts or events shall include unusual weather, floods, epidemics, war, riots, strikes, lockouts, protest demonstrations, unanticipated site conditions and instability. Any delay within the scope of this provision which cumulatively exceeds 45 days shall, at option of either party, make the Agreement subject to termination or renegotiation.

18. TERMINATION

Either CLIENT or BBC&M may terminate this agreement for reasons identified elsewhere in this agreement. In the event termination becomes necessary, the party effecting the termination shall so notify the other party, and termination shall become effective within seven calendar days after receipt of the termination notice. The CLIENT shall be obligated pursuant to the terms of the agreement for all services performed by BBC&M on the CLIENT'S behalf. In the event of termination by CLIENT, BBC&M may complete and be compensated for such analyses and records as are necessary to complete its files and may also complete a report on the Services performed to the date of notice of termination.

19. DISPUTE RESOLUTION

All claims, disputes and other matters in controversy between BBC&M and CLIENT arising out of this Agreement shall be submitted to mediation before and as a condition precedent to other remedies provided by law.

20. NOTICES

Any notice to be given under this Agreement shall be in writing and shall be deemed given and received when delivered in person, deposited in the United States Mail, or by Courier, to the responsible project manager under this agreement at the appropriate address for BBC&M or CLIENT as appropriate.

21. APPLICABLE LAW

The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

22. SEVERABILITY

If any provision of this Agreement shall to any extent be invalid, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

23. AMENDMENT

This Agreement may not be amended except in a writing executed by both BBC&M and CLIENT. No alterations or modifications to these Terms & Conditions shall be effective unless affirmatively contained in the signed proposal.

24. DEFINITIONS

Claims or liability as referred to in this document shall include damages, liability for injury or loss, cost of defense and all other losses.