

November 16, 2015

Proposal QTB030083

Richard W. Freese, PE  
City of Rochester  
201 4<sup>th</sup> Street SE  
Suite 150  
Rochester, MN 55904  
[rfreese@rochestermn.gov](mailto:rfreese@rochestermn.gov)

Re: Proposal for Environmental Consulting Services and Geotechnical Evaluation  
Proposed Parking Garage #6  
Southeast Corner of Broadway and Center Street  
Rochester, Minnesota

Dear Mr. Freese:

Braun Intertec respectfully submits this proposal for environmental consulting services and geotechnical evaluation at the above referenced site. We have prepared this proposal based on conversations with you and our experience working on projects of similar size and scope.

## **Project Understanding**

Based on the information provided to us, we understand this project includes the redevelopment of an existing municipal surface parking lot into a new municipal parking ramp. We have completed geotechnical and environmental work to date in support of this project and the adjacent Broadway at Center private development. We understand the city is considering expanding the scope of the parking ramp project to include crossing over the existing railway into 1<sup>st</sup> Avenue Southeast right of way, and additional geotechnical and environmental investigation is necessary to accommodate this.

Design details for the parking ramp have not been finalized, but based on our conversations with the project team, we understand preliminary plans call for a multi-story post-tensioned deck parking ramp with one below-grade level.

## **Scope of Services**

### **Task 1: Phase I Environmental Site Assessment**

The objective of the Phase I environmental site assessment (ESA) is to evaluate the site for indications of recognized environmental conditions and to assist in satisfying All Appropriate Inquiries (AAI) criteria and requirements. The Phase I ESA will be conducted in general conformance with the scope and limitations of American Society for Testing Materials (ASTM) Practice E 1527-13 and 40 CFR Part 312.21.

### **Site History Review**

The Phase I ESA will summarize reasonably ascertainable information pertaining to former and current land-use activities at the site. Our summary will include a review of aerial photographs, fire insurance atlases, city directories, property tax files, building records, topographic maps and/or other historical documents to satisfy the historical-use requirements of the ASTM Practice E 1527-13 and 40 CFR Part 312.21.

### **Regulatory Information Review**

We will request that a national regulatory information vendor, such as Environmental Data Resources, Inc., conduct a limited file evaluation of the site. If readily available and practically reviewable, the file evaluation will include a review of the following databases within the corresponding radius indicated in the ASTM Practice E 1527-13 and 40 CFR Part 312.21.

- Federal National Priorities List (NPL)
- Federal Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)
- Federal Institutional and Engineering Controls
- Federal Resource Conservation and Recovery Act (RCRA) Transport, Storage and Disposal (TSD) facilities
- Federal RCRA TSD facilities that have received RCRA corrective action activities
- Federal RCRA generators
- Federal Emergency Response Notification (ERNS) sites
- State NPL and CERCLIS equivalents
- State landfill and/or solid waste disposal sites
- State Voluntary cleanup programs
- State leaking underground storage tank (LUST) sites
- State registered underground storage tank (UST) sites
- State Brownfield programs
- State Institutional and Engineering Controls
- State spills list
- Environmental liens

We will review and summarize this information and comment on known and potential environmental hazards that may impact the site. The scope of work does not include a detailed review of file information of identified facilities listed on the regulatory databases.

### **Site Reconnaissance and Interviews**

The Phase I ESA will include a reconnaissance of the site, which includes a complete reconnaissance of the building interiors. We assume that we will have access to all portion of the site. During the reconnaissance, we will note, if observed, the type of vegetation, exposed soils, open excavations or depressions, and site topography. Visible indications of underground and aboveground storage tanks, dumping, spills of petroleum and chemicals, and other obvious potential sources of contamination will be noted. In addition, we will conduct interviews with site representatives and governmental officials regarding past and current land-use activities.

## **Results and Reporting**

A draft Phase I ESA report will be sent to you for review and comment. The Phase I ESA report will remain in draft status until we are notified by you to proceed with issuance of the final Phase I ESA report.

## **User-Provided Information**

As part of Phase I ESA, the "User" should provide available information to Braun Intertec as the Environmental Professional to help identify the possibility of recognized environmental conditions in connection with the Site. A "User" is the party seeking to use ASTM Practice E 1527-13 to complete an environmental site assessment and may include, without limitation, a potential purchaser, tenant or owner of the property, a lender, or a property manager.

***The attached User questionnaire must be completed in its entirety by the User(s) and returned with the signed authorization. If multiple Users are requesting reliance on the Phase I ESA, please provide us with a questionnaire completed by each of the appropriate entities.***

## **Assessment Limitations**

Upon completion of the Phase I ESA, Braun Intertec does not guarantee qualification for Landowner Liability Protections (LLP). Our proposed scope of services is consistent with "good commercial and customary practices" (as defined by ASTM Practice E 1527-13) conducted in an effort to evaluate recognized environmental conditions at a site in this area.

## **Task 2: Geotechnical Evaluation**

### **Site Access, Staking and Utility Clearance**

Based on reconnaissance of the area, it appears that the site is accessible to a truck-mounted drill rig. Several parking spots will need to be blocked off along 1<sup>st</sup> Avenue SE (which is currently metered). We will coordinate with City staff as needed to bag the meters during our field work, which we anticipate will be 2 to 3 days to complete. We assume there will be no permit fee associated with this.

We will stake prospective subsurface exploration locations and obtain surface elevations at those locations using GPS (Global Positioning System) technology. For purposes of linking the GPS data to an appropriate reference, we request that you provide CAD files indicating location/elevation references appropriate for this project, or give us contact information for the consultant that might have such information.

Depending on access requirements, ground conditions or potential utility conflicts, our field crew may alter the exploration locations from those proposed to facilitate accessibility.

Prior to drilling or excavating, we will contact Gopher State One Call and arrange for notification to the appropriate utility vendors to mark and clear the exploration locations of public underground utilities. You or your authorized representatives are responsible to notify us before we begin our work of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

### **Penetration Test Borings**

We propose to drill four (4) standard penetration test borings for the parking garage, extending them to depths at which refusal is met on bedrock, which we assume will average about 30 feet. Auger refusal is defined as the depth at which the drill rig is unable to advance the auger using standard auger drilling techniques. Standard penetration tests will be performed at 2 1/2-foot vertical intervals to a depth of about 15 feet, and at 5-foot intervals at greater depths.

If groundwater is encountered in the boreholes, the depth where it is observed will be recorded on the boring logs.

If existing fill, organic materials or other structurally unfavorable soils are not penetrated above the intended boring termination depths, we will extend the borings to obtain at least five feet of penetration into more competent materials at greater depths. The additional information will help evaluate such issues as excavation depth, consolidation settlement, and foundation alternatives, among others. If deeper borings (or additional borings) are needed, we will contact you prior to increasing our total estimated drilled footage and submit a Change Order summarizing the anticipated additional effort and the associated cost, for your review and authorization.

### **Rock Cores**

We will core bedrock encountered at two (2) locations. We propose to take two 5-foot long cores at each location. Upon core extraction, each hole will be grouted. Rock cores will be returned to our laboratory for classification. We will prepare a core noting the rock name, group or formation, its lithology and physical characteristics, the rate of core barrel advance, water pressure and return, percent recovery and Rock Quality Designation (RQD), among other criteria.

### **Borehole Abandonment**

Minnesota Well Code requires sealing of any boring or core that encounters groundwater and is either greater than 25 feet deep or penetrates a confining layer. Based on the anticipated drilling depths, we will make provisions to seal all four boreholes.

### **Sample Review and Laboratory Testing**

Soil samples will be returned to our laboratory, where they will be visually classified and logged by a geotechnical engineer in general accordance with ASTM D2487. To help classify the materials encountered and estimate/measure the engineering properties necessary to our analyses, we have budgeted to perform the following laboratory tests:

- *(8) Moisture content tests (ASTM D2216)* – intended to aid in classification, evaluation of moisture condition, and estimation of engineering parameters;
- *(4) Moisture content and unit weight tests* – intended to provide measurement of the soils' wet and dry unit weights for settlement and bearing capacity calculations;
- *(4) Percent passing the #200 sieve tests* – intended to aid in classification and to determine the percentage of silt/clay-sized (fines) particles;

- (2) *Organic content tests (ASTM D2974)* – intended to evaluate whether existing fill soils may be reused as structural backfill;
- (2) *Unconfined Compressive Strength of Rock tests* – intended to provide a measure of the bedrock strength.

It is our intention to only perform laboratory tests that will be necessary to our analyses. If after review of the soils it is our opinion that portions of the above schedule would not be cost-beneficial to the project, we will reduce the schedule and we will not charge for tests that are not performed. Conversely, if after review it appears that additional testing would provide potential cost-benefits to the project, we will request authorization for the additional testing through a Change Order.

### **Geotechnical Reporting**

Data obtained from the borings and laboratory tests will be used to evaluate the subsurface profile and groundwater conditions, perform engineering analyses related to structure design and performance and prepare a report, including:

- A CAD-generated sketch showing project components, limits, and exploration locations.
- Logs of the borings describing the materials encountered and presenting the results of our groundwater measurements.
- Logs of the rock cores summarizing the rock classification and characteristics, and the conditions for which it was drilled and recovered.
- A summary of the subsurface profile and groundwater conditions.
- Discussion identifying the site conditions that will impact structure design and performance, qualifying the nature of their impact, and outlining alternatives for mitigating their impact.
- Discussion regarding the reuse of onsite materials during construction and the impact of groundwater on construction.
- Recommendations for preparing structure subgrades, including excavation support, if applicable, and the selection, placement and compaction of excavation backfill and other structural fill.
- Recommended net allowable bearing pressures for the design of spread footing foundations and estimated settlements at the indicated pressures.
- Recommended soil and rock parameters for use in design of drilled shaft foundations.

Only an electronic copy of our report will be submitted to you unless you request otherwise. At your request, the report can also be sent to additional project team members.

## **Schedule**

We anticipate our work can be performed according to the following schedule:

- *Drill rig mobilization* – to begin approximately 2 weeks following authorization;
- *Field exploration* – 2 to 3 days onsite to complete the work;
- *Classification* – approximately 1 week following completion of the drilling;
- *Preliminary results, recommendations, and draft boring logs* – as they are obtained and reviewed;
- *Geotechnical Report submittal* – approximately 2 to 3 weeks after completion of the field work.

If our proposed scope of services cannot be completed according to this schedule due to circumstances beyond our control, we may need to revise this proposal prior to completing the remaining tasks.

## **Task 3: Phase II Environmental Site Assessment**

The objective of the investigation is to evaluate if impacted soil is present on the site in areas where excavation activities will take place during redevelopment.

During advancement of the geotechnical soil borings, a field technician, who is also a licensed asbestos inspector, will monitor the subsurface materials encountered at each location. Soils will be classified in the field in accordance with ASTM D 2487 “unified Soils Classification System” and ASTM D 2488 “Recommended Practice for Visual and Manual Description of Soils.” Soil samples for photoionization detector (PID) headspace analyses will be collected at 2 1/2-foot vertical intervals. In addition, the soil will be observed for visual and incidental olfactory indications of contamination. Visual or olfactory indications of contamination might include stained soil, the presence of ash, asbestos-containing material, slag, or other debris with the potential to contain hazardous materials, or a petroleum-like or chemical-like odor. Soil samples also will be classified by a Professional Engineer in our soils laboratory.

**Chemical Analyses.** Soil samples for chemical analyses will be collected. If potentially contaminated fill soil is identified or if PID readings greater than background are encountered, soil samples will be collected for chemical analyses from the interval where potential impacts were identified. If no indications of contamination are encountered in the fill soil, samples for chemical analyses will be collected from depths most likely to have been impacted by past land use or from depths at which soil will be excavated during site redevelopment. The soil samples will be submitted for the following laboratory analyses:

- Volatile organic compounds (VOCs) using the United States Environmental Protection Agency (EPA) Method 8260.
- Polynuclear aromatic hydrocarbons (PAHs) using EPA Method 8270.
- Gasoline-range organics (GRO) using the WDNR Method.
- Diesel-range organics (DRO) using the WDNR Method.
- 8 RCRA metals using EPA 6000 and 7000 series methods.

Grab samples will be collected for VOC and DRO analyses. Composite samples will be collected for the PAH and metals analyses. Parameters might be adjusted based on the results of the initial phase of investigation or on field screening results. For the purposes of this proposal we are assuming one soil sample will be collected from each boring.

No groundwater sampling is anticipated for this scope of services.

**Reporting.** Verbal results of the investigation will be provided to you as they become available to us. Upon completion of the on-site work and chemical analyses, a report will be prepared for the site detailing our methods, results and conclusions.

#### **Task 4: Response Action Plan Addendum**

Investigation data and information from the design plan will be incorporated into a response action plan (RAP) addendum for the Site. The general objective of the RAP Addendum is to update the existing approved RAP to include the additional property. The purpose of the RAP is to provide procedures for the management and handling of contaminated soil and other environmental issues that might arise during redevelopment of the Site. Specifically, the RAP will describe how contaminated soils and/or waste will be handled, what sampling activities will be completed during construction to characterize the site conditions, proposed cleanup levels, and identify site contacts.

#### **Task 5: MPCA Liaison Services and Project Management**

We will continue to provide liaison services with the Minnesota Pollution Control Agency (MPCA) voluntary programs with the assumed goals of obtaining RAP addendum approval, site closure and No Further Action Determinations as appropriate. The MPCA is a fee for service program and will bill the original applicant (Titan Development) for their review time. Additional project coordination and communication with the project team is anticipated with the addition of this parcel.

## Estimated Costs

Based on our current understanding of the site conditions and the assumptions stated in this proposal, we estimate the cost for our proposed services will be **\$23,100**. We will invoice you on a time-and-materials basis. If additional, out-of-scope work is requested by you or recommended by us, we will request authorization from you for additional fees prior to performing the additional work (if any).

Our estimated costs are as follows:

<u>Service Description</u>	<u>Cost Estimate</u>
<b>Task 1 - Phase I ESA</b>	<b>\$ 2,400</b>
<b>Task 2 – Geotechnical Evaluation</b>	<b>\$ 9,310</b>
▪ <i>Drilling (120 feet plus 20 feet rock coring \$5,300)</i>	
▪ <i>Staking/Utility Clearance (\$570)</i>	
▪ <i>Laboratory Testing (\$960)</i>	
▪ <i>Engineering Evaluation and Project Management (\$2,480)</i>	
<b>Task 3 – Phase II ESA</b>	<b>\$ 6,780</b>
▪ <i>Environmental Technician, sampling equipment (\$1,586)</i>	
▪ <i>Analytical Testing (4 soil \$2,460)</i>	
▪ <i>Project Management and Reporting (\$2,734)</i>	
<b>Task 4 – Response Action Plan Addendum</b>	<b>\$ 2,400</b>
<b>Task 5 – MPCA Liaison Services and Project Management</b>	<b>\$ 2,210</b>
<b>Total</b>	<b>\$ 23,100</b>

The cost estimate of **\$23,100** presented in this proposal is based on the assumption the proposal will be authorized and completed within the proposed schedule. If the project is not authorized within the proposed schedule, we reserve the right to resubmit the cost estimate. If the project cannot be completed within the proposed schedule due to circumstances beyond our control, we reserve the right to resubmit cost estimates for completion of tasks remaining.

Our work may extend over multiple invoicing periods. As such, for work that is performed during the course of each invoicing period, we will submit partial progress invoices.

## **Schedule**

We anticipate that we can begin the work immediately upon your authorization and that our services will be completed in accordance with the grant application requirements. If our proposed scope of services cannot be completed according to this schedule due to circumstances beyond our control, we may need to revise this proposal prior to completing the remaining tasks.

## **General Remarks**

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. If it is acceptable to you, *please sign and return to us as authorization to proceed. Please also return the completed User Questionnaire, in its entirety.*

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement. To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Tim Lenway (952.995.2488 or [Tlenway@braunintertec.com](mailto:Tlenway@braunintertec.com)) or Cyle Erie (507.226.4997 or [Cerie@braunintertec.com](mailto:Cerie@braunintertec.com)).

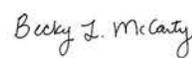
Sincerely,

BRAUN INTERTEC CORPORATION



Erie, Cyle  
Nov 16 2015 3:48 PM

Cyle N. Erie, PE  
Principal/Senior Engineer



McCarty, Becky  
for  
Nov 16 2015 3:42 PM

Timothy S. Lenway, MPH  
Principal

Attachments:

General Conditions (9/1/13)  
Client Information Request Form  
ASTM Practice E 1527-13 User Questionnaire

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### Authorization to Proceed:

The proposal is accepted, and you are authorized to proceed:

City of Rochester

Authorizer's Firm



Authorizer's Signature

Ardell F. Brede

Authorizer's Name (please print or type)

Mayor

Authorizer's Title

12/7/2015

Date

# General Conditions

## Section 1: Our Agreement

**1.1** Our agreement (“Agreement”) with you consists of these General Conditions and the accompanying written proposal or authorization. This Agreement is our entire agreement. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

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

**1.3** In the event you use a purchase order or other form to authorize our services, any conflicting or additional terms are not part of our Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered.

## Section 2: Our Responsibilities

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

**2.2** In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction.

**2.3** We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and, further, that site conditions may change over time.

**2.4** Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing.

We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

**2.5** We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.

**2.6** You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

**2.7** Estimates of our fees or other project costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

## Section 3: Your Responsibilities

**3.1** You will provide us with prior geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed our work.

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

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

**3.4** You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials in a sample provided to us. You agree to provide us with information in your possession or control relating to contamination at the work site. If we observe or suspect the presence of contaminants not anticipated in our Agreement, we may terminate our work without liability to you or to others, and we will be paid for the services we have provided.

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

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

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

## Section 4: Reports and Records

**4.1** Unless you request otherwise, we will provide our report in an electronic format.

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

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

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

**4.5** Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your property. They may be discarded or returned to

you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

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

#### **Section 5: Compensation**

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

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

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

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

**5.5** If you do not pay us within 60 days of invoice date, you agree to reimburse our expenses, including but not limited to attorney fees, staff time, and other costs of collection.

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

**5.7** If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation. If you and we do not reach agreement on such compensation within 30 days of our written application, we may terminate without liability to you or others.

**5.8** If you fail to pay us within 60 days following invoice date, we may consider the default a total breach of our Agreement and, at our option, terminate our duties without liability to you or to others.

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

#### **Section 6: Disputes, Damage, and Risk Allocation**

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

**6.2** Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

**6.3** We will not be liable for damages unless suit is commenced within two years of the date of injury or loss or within two years of the date of substantial completion of our services, whichever is earlier. We will not be liable unless you have notified us of the discovery of the claimed breach of contract, negligent act, or omission within 30 days of the date of discovery and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services.

**6.4** For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for our services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of our Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.

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

**6.6** The prevailing party in any action relating to this Agreement shall be entitled to recover

its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.

**6.7** The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury. No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual employees.

#### **Section 7: General Indemnification**

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

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

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

#### **Section 8: Miscellaneous Provisions**

**8.1** We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our sole negligence.

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

**8.3** Neither of us will assign nor transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

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

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

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**Environmental Site Assessment**

Project/Site Name \_\_\_\_\_

So that we may serve you better, please answer the following questions concerning the project Site. If a question does not apply to the Site, answer with "NA." If you do not know the answer, reply "unknown." Please return the completed form along with one copy of the signed authorization letter.

**Client Objectives**

A. What is your interest in the Site? Circle all that apply.

Buying Property      Refinancing      Selling Property  
Development      Redevelopment      Other \_\_\_\_\_

B. For reliance purposes, who would you like to be addressed on the report?

Name \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ E-mail/Fax \_\_\_\_\_

C. How many copies? \_\_\_\_\_ Unless otherwise requested, the Braun Intertec standard is two.

To whom? \_\_\_\_\_

D. Is there anyone not already listed on the report that requires a copy of the final report?

Name \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address \_\_\_\_\_ E-mail/Fax \_\_\_\_\_

E. What is the desired completion date for this project?

\_\_\_\_\_

F. Do you wish to receive a verbal report before the written report is received?    YES    NO

G. Is a draft report requested prior to submittal of the final report? Once a report is issued final, changes can be made, but additional fees will apply and will require that the original copies of the report be sent back.

YES    NO    E-mail/Fax \_\_\_\_\_

H. Is confidentiality requested?    YES    NO

If so, to whom is it limited? \_\_\_\_\_

**Site-Specific Information**

A. Who is the current property owner?

Name \_\_\_\_\_ Telephone \_\_\_\_\_

B. Has any previous environmental work been performed on the Site? Circle all that apply.

Geotechnical/Soil Borings                      Phase I/Phase II Site Assessments

Asbestos Evaluations                              Hazardous Materials Testing

Unknown                                              No

Other: \_\_\_\_\_

If yes:

When was it performed?

\_\_\_\_\_

By whom? Name and telephone number?

Name \_\_\_\_\_ Telephone \_\_\_\_\_

What were the results?

\_\_\_\_\_

Are report copies available?    YES    NO

C. Where is the Site located?

Address \_\_\_\_\_

Legal description \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

D. Is a current Site plan available? If so, please provide.                      YES    NO

E. Who will provide access to the property and/or who is the Site contact?

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

F. Are there any special concerns regarding the property?

\_\_\_\_\_

G. How large is the property (total acreage)?

\_\_\_\_\_

H. How is the property currently used? Circle all that apply.

Undeveloped Commercial	Agricultural	Residential	Parking Lot
Industrial	Retail	Office Building	Warehouse
Other _____			

I. What is the proposed use of the property?

\_\_\_\_\_

J. Are there existing buildings on the property?      YES    NO

If yes:

How many buildings? \_\_\_\_\_

What year was each building built? \_\_\_\_\_

What is the total square footage of each building? \_\_\_\_\_

Are you aware of any asbestos-containing building materials in any building? \_\_\_\_\_

Give a brief description and use of each building.

\_\_\_\_\_

\_\_\_\_\_

K. What was the property used for in the past?

\_\_\_\_\_

L. Has the property ever been used for dumping or landfilling in the past?

\_\_\_\_\_

M. How are the adjacent properties used?

\_\_\_\_\_

N. Are there currently or previously any aboveground or underground storage tanks located on the property?

YES NO

If yes:

Where are they located?

---

What is the size and contents of the tanks? (ex: 500-gallon diesel)

---

When were the tanks installed?

---

Are there any maintenance records available for the tanks?

---

Are the tanks currently being used? YES NO

If No: When were the tank(s) closed? \_\_\_\_\_

Was the MPCA notified? \_\_\_\_\_

O. Have hazardous chemicals or petroleum products ever been stored at the Site? YES NO

If yes, which ones? \_\_\_\_\_

P. Utilities

Are there any wells or septic systems formerly or currently located at the Site? YES NO

Is it connected to city sewer and water? YES NO

What types of utilities service the Site? Circle all that apply.

Gas                      Electric Propane                      Other \_\_\_\_\_

## ASTM Practice E 1527-13 User Questionnaire

**Site:** Proposed Parking Garage #6  
Southeast Corner of Broadway and Center Street  
Rochester, Minnesota

**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Company:** \_\_\_\_\_

In order to qualify for one of the Landowner Liability Protections (LLPs) offered by the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (the “Brownfields Amendment”, the User must conduct the following inquiries. The User should provide the following information to the environmental professional. Failure to conduct these inquiries could result in a determination that “all appropriate inquiries” is not complete.

**(1) Environmental cleanup liens that are filed or recorded against the *property*.**

The types of title reports that may disclose environmental liens include Preliminary Title Reports, Title Commitments, Condition of Title, and Title Abstracts. Chain-of-title reports will not normally disclose environmental liens. Did a search of *recorded land title records* (or judicial records where appropriate) identify any environmental cleanup liens filed or recorded against the *property* under federal, tribal, state or local law?

**(2) Activity and use limitations (AULs) that are in place on the *property* or that have been filed or recorded against the *property*.**

The types of title reports that may disclose AULs include Preliminary Title Reports, Title Commitments, Condition of Title, and Title Abstracts. Chain-of-title reports will not normally disclose AULs. Did a search of *recorded land title records* (or judicial records where appropriate) identify any AULs, such as *engineering controls*, land use restrictions, or *institutional controls* that are in place at the *property* and/or have been filed or recorded against the *property* under federal, tribal, state or local law?

**(3) Specialized knowledge or experience of the person seeking to qualify for the LLP.**

Do you have any specialized knowledge or experience related to the *property* or nearby properties? For example, are you involved in the same line of business as the current or former *occupants* of the *property* or an adjoining *property* so that you would have specialized knowledge of the chemicals and processes used by this type of business?

**(4) Relationship of the purchase price to the fair market value of the *property* if it were not contaminated.**

Does the purchase price being paid for this *property* reasonably reflect the fair market value of the *property*? If you conclude that there is a difference, have you considered whether the lower purchase price is because contamination is known or believed to be present at the *property*?

- (5) **Commonly known or *reasonably ascertainable* information about the *property*.**  
Are you aware of commonly known or *reasonably ascertainable* information about the *property* that would help the *environmental professional* to identify conditions indicative of releases or threatened releases? For example,
- (a) Do you know the past uses of the *property*? If so, please explain.
  - (b) Do you know of specific chemicals that are present or once were present at the *property*? If so, please explain.
  - (c) Do you know of spills or other chemical releases that have taken place at the *property*? If so, please explain.
  - (d) Do you know of any environmental cleanups that have taken place at the *property*? If so, please explain.
- (6) **The degree of obviousness of the presence or likely presence of contamination at the *property*, and the ability to detect the contamination by appropriate investigation.**  
Based on your knowledge and experience related to the *property*, are there any *obvious* indicators that point to the presence or likely presence of contamination at the *property*? If so, please explain.