



CITY COUNCIL Agenda Item #19-020(a)

Date: January 24, 2019

Consent X Discussion ___

SUBJECT: Recommendation of professional services for Clarendon Ave Soil Borings.

SUBMITTING DEPARTMENT: Public Works

RECOMMENDED ACTION:

Approve contract for professional soil borings and testing services to S.W. Cole for the estimated amount of \$11,050.00 and designate the City Manager as the duly authorized agent to execute the contract. The contract will include field services in the amount of \$10,500.00 plus an estimated \$550 for chemical soil testing.

RELATED COUNCIL GOAL/PRIOR ACTION: Sustainable Infrastructure

EXPENDITURE REQUIRED: \$11,050.00

SOURCE OF FUNDS: Water Bond / Sewer Bond / CIP

LEGAL REQUIREMENTS: N/A

BACKGROUND INFORMATION: DPW staff is in the process of designing water, sewer, storm utilities, and roadway reconstruction details for Clarendon Avenue between Bailey Ave and Jordan Street. The soils investigation work will help to accomplish two goals in the design process, one is to provide the sub surface conditions along the street and the second will be to test for contaminants in the soil to ensure it is suitable for the installation of HDPE Pipe (the preferred pipe to install). The contract base price for field work is \$10,500 and DPW anticipates having five samples (\$110 each) taken for testing.

DPW staff has worked with S.W. Cole, in the past on a number of projects with good results and has concluded that their contract is in compliance with City standards. These professional services are needed before design can advance to the next stage.

SUPPORTING DOCUMENTS: S.W. Cole Contact

INTERESTED PARTIES: DPW

CITY MANAGER'S APPROVAL:

A handwritten signature in black ink, appearing to read "W. Johnson", is written over the "CITY MANAGER'S APPROVAL:" text.

19-0012 S

January 7, 2019

City of Montpelier
Attn: Mr. Zach Blodgett
Department of Public Works
39 Main Street
Montpelier, Vermont 05602

Subject: Proposal
Subsurface Exploration Services
Proposed Clarendon Avenue Water Line
Montpelier, Vermont

Dear Mr. Blodgett:

As requested, we have prepared this Proposal to perform a subsurface exploration program and laboratory testing services for the above referenced project. The purpose of our services is to explore subsurface conditions at the site and provide a summary of the same.

SITE AND PROPOSED CONSTRUCTION

The site proposed for construction is located along Clarendon Avenue in the City of Montpelier, Vermont. Clarendon Avenue is a local road owned and operated by the City of Montpelier which is present through a largely residential area. In general, grades across the site increase progressing from southeast to northwest.

As we understand it, new water line is proposed for construction along Clarendon Avenue, extending approximately 1,250 feet from its intersection with Bailey Avenue to its intersection with Dairy Lane. In addition, approximately 250 feet of new water line is also proposed on Redstone Avenue and approximately 500 feet on Bailey Avenue. It is understood that the new water line is expected to be of HDPE construction.

ANTICIPATED SUBSURFACE CONDITIONS

Available published soils mapping identifies the surficial soils as consisting of a glaciolacustrine silt and clay. Shallow groundwater is noted as being present along Clarendon Avenue. Areas of shallow bedrock (less than 5 feet) are noted as being present in close proximity to Clarendon Avenue.

SCOPE OF SERVICES

S. W. Cole Engineering, Inc. (S.W.COLE) will undertake a subsurface exploration program and perform laboratory testing on recovered soils. A summary of the subsurface conditions will be provided in a written report. Specific tasks are outlined as follows:

Exploration and Testing: S.W.COLE will coordinate an exploration program consisting of the advancement of test borings along Clarendon, Redstone, and Bailey Avenues. Test borings will be advanced at approximately 100 foot intervals along the length of the proposed water main, and will be extended to depths of approximately 10 feet below the existing ground surface or to refusal, whichever is shallower. If refusal is encountered at one of the planned locations, the spacing between test borings will be reduced to 50 feet until the test borings reach their planned 10 foot depth. Excluding additional holes due to refusal, it is anticipated that a total of 19 test borings will be advanced over the course of two (2) days.

During advancement of the test borings, standard penetration testing and sampling will be performed in general accordance with ASTM Designation D1586. The sampling and penetration testing will be performed in continuous 2-foot intervals until termination of the borings. Upon completion, approximately four (4) to six (6) of the test borings will be converted into groundwater monitoring wells to allow for monitoring and measurement of the groundwater table across the project site. The remainder of the test borings will be backfilled with sand and the ground surface restored with asphalt cold patch. In the event that bedrock is encountered at depths less than 10 feet below the existing ground surface, a single 5-foot core run at one (1) boring will be performed in general accordance with ASTM Designation D2113.

S.W.COLE Explorations, LLC, a subsidiary of S.W.COLE, will advance the test borings.

S.W.COLE will pre-mark the test boring locations at the site and contact DigSafe and local municipalities to mark public utilities. We request that you furnish to S.W.COLE a dimensioned plan identifying the type and location of underground utilities and/or other manmade objects beneath the site. If there are questions regarding the potential presence of underground utilities or other obstructions, S.W.COLE will determine the need to engage a private utility locator to locate underground utilities and/or other manmade objects in the immediate vicinity of proposed subsurface explorations. Neither S.W.COLE nor its subcontractors shall be responsible for any loss arising from damage to or contact with buried utilities and/or other manmade objects that were not brought to the attention of S.W.COLE prior to commencement of S.W.COLE's exploration program.

If required, S.W.COLE will complete a Public Works permit application and submit the completed application to the City of Montpelier Department of Public Works prior to commencing field work.

Due to the relatively low traffic volumes expected along each of the avenues, maintenance and protection of traffic is not expected to be required, and as such, is not included within our proposal. In the event that it is needed, a subcontractor will be retained by S.W.COLE to provide maintenance and protection of traffic consisting of signage and cones around the work area with flaggers present on either end of the same.

Laboratory testing will be performed on select recovered samples to determine the basic geotechnical index properties of the soils encountered. Samples recovered from along the route of the proposed water line will be tested for volatile organic compounds, including BTEX.

Analysis and Report: A summary of the subsurface conditions encountered will be provided in a written report. Included with our report will be an exploration location plan, subsurface exploration logs and laboratory test results. Our report will be provided in a portable document file (pdf) format.

BUDGET AND COMPENSATION

S.W.COLE will charge a total lump sum fee of \$10,500 for the exploration work and geotechnical engineering services described herein.

Additionally laboratory testing for volatile organic compounds, including BTEX, will be charged at a rate of \$110 per sample.

Public Works permit fees will be charged at cost in the event that the fees are not waved by the City of Montpelier.

In the event that private utility location services are required, S.W.COLE will charge for subcontracted private utility location services at a unit rate of \$175 per hour for travel, field time, and data processing.

SCHEDULE

Based on current drilling schedules, it is expected that field work can be initiated within three (3) weeks upon receipt of authorization to proceed. Our subsurface condition report will be issued within one (1) week after completion of the geotechnical and environmental laboratory testing.

TERMS AND CONDITIONS

It is understood that services provided by S.W.COLE are subject to our attached Terms and Conditions. To confirm our understanding, please return a signed copy for our files. Please do not hesitate to contact us if you have any questions about this proposal.



19-0012 S
January 7, 2019

We look forward to being of assistance to you on this project.

Sincerely,

S. W. Cole Engineering, Inc.

Thomas J. Morgan, P.E.
Senior Geotechnical Engineer

Chad B. Michaud, P.E.
Executive Vice President

TJM:cbm

CONTRACT ACCEPTANCE

BY: _____

TITLE: _____

FIRM: _____

TELEPHONE: _____



S. W. COLE ENGINEERING, INC. TERMS & CONDITIONS

The following Terms and Conditions, together with the attached Proposal constitute the terms of the agreement between S. W. Cole Engineering, Inc. ("S.W.COLE") and the party that authorizes performance of services ("Client") with respect to the performance of any services.

1. Scope of Services

S.W.COLE shall perform the services described in the attached Proposal/Agreement.

2. S.W.COLE's Responsibility

- 2.1 Perform services in accordance with the attached Proposal/Agreement.
- 2.2 Perform services in a manner that is consistent with others performing similar work in the geographic area at the time services are rendered.
- 2.3 Comply with federal, state and local laws in so far as applicable to the services contemplated under this Agreement.
- 2.4 Maintain professional licenses necessary for the performance of services.
- 2.5 Inform Client of changes in conditions or circumstances that could impact the cost or timing of services.
- 2.6 Pay all applicable employment taxes and benefits for S.W.COLE's employees.

3. Client Responsibilities

- 3.1 Furnish to S.W.COLE, as needed for performance of S.W.COLE's services, the following:
 - 3.1.1 any existing data, including, without limitation, borings, probings and subsurface explorations, environmental reports, laboratory tests and other data relative to design or construction of the project;
 - 3.1.2 property, boundary, easement, right-of-way, topographic and utility surveys, and property descriptions.

Client acknowledges that S.W.COLE has the right to reasonably rely on information provided.

- 3.2 Give prompt written notice to S.W.COLE whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of S.W.COLE's services.
- 3.3 Arrange for S.W.COLE, its agents and representatives to have safe access to the site and buildings thereon, and other locations as required, at reasonable times throughout the performance of the services.
- 3.4 Acknowledge that S.W.COLE is a corporation and agree that any claim made by the Client arising out of any act or omission of any officer or employee of S.W.COLE in the execution or performance of this Agreement, shall be made against S.W.COLE and not against such officer or employee.

4. Insurance

S.W.COLE maintains worker's compensation insurance of a form and in the amount required by state law. S.W.COLE maintains general liability, automobile liability and professional liability coverage. Certificates for insurance coverage will be provided to the Client upon request and S.W.COLE will promptly notify the Client of any impending change in coverage. S.W.COLE shall comply with Client's reasonable requests for special endorsements, additional limits, additional coverages, et al., providing these are available to S.W.COLE, and Client remunerates S.W.COLE for the cost thereof.

5. Engagement of Laboratories and Others

If so requested or agreed by the Client, S.W.COLE will engage the services of laboratories, drillers, testing firms, subconsultants, or third-parties to perform suitable aspects of the services. Invoices for such third-party services will be reviewed for accuracy and completeness by S.W.COLE. If acceptable, payment to these third-parties will be made directly by S.W.COLE. S.W.COLE will



recommend the use of such third-parties with reasonable care but does not guarantee their services and will not be liable for their errors or omissions.

6. Billing and Payment

- 6.1 The Client shall pay S.W.COLE in accordance with the rates and charges set forth in this Agreement or otherwise agreed upon. S.W.COLE will generally submit invoices for services rendered and expenses incurred during the previous period on a four (4) week periodic basis. For projects billed at unit rates, reimbursable expenses (e.g., mileage, tolls, lodging, supplies) will be invoiced at cost plus 5 percent; subcontracted services (e.g., explorations or laboratory testing) will be invoiced at cost plus 15 percent; and a communication fee covering charges associated with postage, report materials, tele-communication costs and other communication-related costs will be charged at a rate equal to 4.5 percent of the invoice amount.
- 6.2 Payment will be due upon receipt of S.W.COLE's invoice. Payments due S.W.COLE and unpaid under the terms of this Agreement shall bear interest from thirty (30) days after the date payment is due at the rate of one and one half (1.5) percent per month (18 percent per annum). In the event that S.W.COLE is compelled to take action to collect past due payments, the Client will reimburse S.W.COLE for all costs and expenses of collection, including without limitation all court costs and reasonable attorney's fees.
- 6.3 Should it be necessary to engage the services of specialized consultants or companies, this will be done with the Client's approval.
- 6.4 If the scope of the project or of S.W.COLE's services is changed materially, the amount of compensation shall be equitably adjusted between the Client and S.W.COLE.
- 6.5 If the project is suspended or abandoned in whole or part, S.W.COLE shall be compensated for all services performed prior to receipt of written or oral notice from the Client of such suspension or abandonment, together with other expenses then

due and project closeout costs. If the project is resumed after being suspended for more than three (3) months, S.W.COLE's compensation shall be equitably adjusted between the Client and S.W.COLE.

- 6.6 No deductions shall be made from S.W.COLE's compensation on accounts or sums withheld from payments to contractors, nor shall payment to S.W.COLE be contingent upon financing arrangements or receipt of payment from any third party.
- 6.7 If the Client fails to make payment when due S.W.COLE for services and other expenses, S.W.COLE may, upon seven (7) days' written notice to Client suspend performance of services under this Agreement. Unless payment in full is received by S.W.COLE within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, S.W.COLE shall have no liability to Client for delay or damage caused Client or others because of such suspension of services.

7. Ownership of Instruments of Service

Plans, specifications, reports, boring logs, calculations, field data, field notes, laboratory and field test data, estimates, and similar documents and materials (other than samples) prepared by or for S.W.COLE as instruments of service are S.W.COLE's property. S.W.COLE shall retain these instruments of service for three (3) years following submission of project deliverables, during which period S.W.COLE's instruments of service will be made available for Client's review at any reasonable time. If Client wants S.W.COLE to retain instruments of service for a longer period, Client shall notify S.W.COLE in writing before expiration of the retention period otherwise prevailing. Client shall remunerate S.W.COLE for additional storage at a fee agreed to by S.W.COLE and the Client. Any reuse or modification of any such documents by Client, without S.W.COLE's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold S.W.COLE harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through the Client.



8. Limitation of Remedies

Client and S.W.COLE have discussed the risks and rewards associated with this project, as well as S.W.COLE's fee for services. Client and S.W.COLE agree to allocate certain of the risks so that, to the fullest extent permitted by law, S.W.COLE's total aggregate liability to Client is limited to \$50,000.00 or the fee of S.W.COLE, whichever is greater for any and all injuries, damages, claims, losses, expenses or claim expenses (including attorneys' fees) arising out of this Agreement based on any cause or under any theory of liability. Such causes or legal theories include, but are not limited to, S.W.COLE's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, and claims for indemnification or contribution. It is intended by the parties that this provision shall apply to the obligations set forth in Paragraph 10 of this Agreement. Client further expressly agrees that unless otherwise mutually agreed to in writing by both parties, all subsequent work performed by S.W.COLE on behalf of Client concerning the property covered by this Agreement will be pursuant to an addendum to this Agreement. This Limitation of Remedies clause will extend to, and applies to, all subsequent work performed by S.W.COLE for Client for this property.

In the event Client does not wish to limit S.W.COLE's liability for this work, or subsequent work done under this project number, to the greater of \$50,000 or S.W.COLE's fee, S.W.COLE may agree to a higher limitation of remedy if the parties mutually agree in writing to an increase in S.W.COLE's fee because of the higher risk S.W.COLE may assume.

9. Subsurface Risks

Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experience by personnel who function in accordance with a professional standard of practice, may fail to detect certain conditions. For similar reasons, actual environmental, geological, and geotechnical conditions that S.W.COLE inferred to exist between sampling points may differ significantly from those that

actually exist. The Client will not hold S.W.COLE responsible for such special risks.

10. Indemnification Hold Harmless

Subject to all otherwise applicable statutes of limitations and repose, and the provisions set forth in Section 8 above, S.W.COLE agrees to indemnify and hold Client, its directors, shareholders, employees, and assigns harmless for all claims, damages and causes of actions, to the extent such claims, damages and causes of action are based on or arise out of S.W.COLE's negligent acts, errors, or omissions.

Client agrees to indemnify and hold S.W.COLE, its directors, shareholders, employees, and assigns harmless for all claims, damages and causes of actions, against S.W.COLE related to the performance of the services in connection with this project, unless such claims are based on or arise out of S.W.COLE's negligent acts or omissions.

11. Construction Phase Responsibilities

When S.W.COLE's services include the performance of any services during the construction phase of the project (including any visits to the site) S.W.COLE shall not, during such visits or as a result of any observations of construction, supervise, direct or have control over Contractor's work nor shall S.W.COLE have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) or safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing its (their) work. S.W.COLE does not guarantee the performance of the construction contract by the Contractor(s), and does not assume responsibility for contractor's failure to furnish and perform its (their) work in accordance with the contract documents.

If S.W.COLE's contract with the Client so requires, S.W.COLE shall review (or take other appropriate action in respect of) shop drawings, samples and other data which Contractor(s) is (are) required to submit, but only for conformance with the design concept of the project and compliance with the information given in the contract

documents. Such review or other actions shall not extend to means, methods, techniques, sequences or procedures of manufacture (including the design of manufactured products) or construction, or to safety precautions and programs incident thereto. S.W.COLE's review or other actions, as described above, shall not relieve the Contractor(s) of (a) its (their) obligations regarding review and approval of any such submittals; and (b) its (their) exclusive responsibility for the means, methods, sequences, techniques and procedures of construction, including safety of construction.

12. Delays

Except as specifically set forth in this Agreement, neither party shall hold the other responsible or liable for damages or delays in performance caused by acts of God, interruptions in the availability of labor, or other events beyond the control of the other party, or that could not have been reasonably foreseen or prevented. For this purpose, such acts or events shall include unusually severe weather affecting performance of services, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, protest demonstrations, unanticipated project site conditions, and inability, with reasonable diligence, to supply personnel, equipment, or material to the project. Should such acts or events occur, both parties shall use their best efforts to overcome the difficulties arising and to resume as soon as reasonably possible the normal pursuit of the services under the Proposal for the specific project. Delays within the scope of this provision which cumulatively exceed thirty (30) days in any six (6) month period shall, at the option of either party, make this Agreement subject to termination or to renegotiation.

13. Hazardous Substances

- 13.1 The Client warrants that the Client has informed S.W.COLE of any hazardous substances which may be present if the Client has knowledge or has any reason to assume or suspect that hazardous substances may be present at the subject property.
- 13.2 If during the course of the investigation hazardous substances are encountered, S.W.COLE retains the right to suspend work immediately unless S.W.COLE and the Client agree upon amendments to the contract which include

provisions for revision of the scope of services, adjustment of budget estimates, and revised terms and conditions. If an amended Agreement is not made between the Client and S.W.COLE within seven (7) days of S.W.COLE's notice of suspension of work, further work under the contract will be terminated. The Client shall pay all fees and charges incurred under the provisions of the proposal through the date of termination.

- 13.3 The Client agrees to compensate S.W.COLE for the cost of decontamination of equipment, replacement of equipment, or other costs incident to the discovery of hazardous substances.
- 13.4 The Client agrees that samples, drill cuttings and other objects containing hazardous substances are not the responsibility of S.W.COLE. The Client agrees that the contaminated samples, contaminated drill cuttings, and other contaminated materials are the responsibility of the Client, and are to be disposed of through arrangements selected and made by the Client.
- 13.5 The Client agrees that, in the event S.W.COLE does not discover hazardous substances at the subject site, it is understood that S.W.COLE cannot maintain that no hazardous substances exist at the subject site.
- 13.6 The Client recognizes the Client's responsibility to inform the property owner, if the property is not owned by the Client, of the discovery of hazardous substances or suspected hazardous substances. The Client further recognizes the Client's responsibility to make any disclosures of the discovery of hazardous substances or suspected hazardous substances required by law to the appropriate governing agencies.
- 13.7 The Client waives any claim against S.W.COLE and agrees to defend, indemnify, and save S.W.COLE harmless from any claim or liability for injury or loss of any type arising from:
 - S.W.COLE's discovery of hazardous substances or suspected hazardous substances, including any costs caused by delay of the project and any cost associated with

- possible reduction of the property's value.
- All consequences of disclosures made by S.W.COLE which are required by governing law.
 - The application of a joint and several liability concept that would in any manner hold or seek to hold S.W.COLE responsible for creating a hazardous condition or permitting one to exist.
 - Cross contamination caused by sampling.
 - S.W.COLE's failure to detect hazardous substances through techniques consistent with other professionals performing similar services in the geographic area at the time that the services are performed.

The Client shall remain liable for and shall pay all fees and charges incurred by S.W.COLE in defense of any such claim.

14. Biological Pollutants

S.W.COLE's scope of work does not include the investigation or detection of the presence of any Biological Pollutants at the project site or in or around any existing or proposed structure at the site unless specifically noted in S.W.COLE's scope of work. Client agrees that S.W.COLE will have no liability for any claim regarding bodily injury or property damage alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants at the project site or in or around any existing or proposed structure at the site. In addition, Client will defend, indemnify, and hold harmless S.W.COLE from any third party claim for damages alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants at the project site or in or around any existing or proposed structure at the site. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, and viruses, and the byproducts of any such biological organisms.

15. Oral Acceptance of Agreement

This Agreement's Terms and Conditions, of which this provision is a part, have been established in large measure to allocate certain risks between Client and S.W.COLE, and S.W.COLE will not initiate service without formal agreement on Terms and Conditions set forth in

this Agreement. For purposes of convenience, Client may choose to accept this Agreement orally or to orally authorize S.W.COLE to initiate services. In that event, Client specifically agrees that, as a material element of the consideration S.W.COLE requires to execute the services indicated herein, oral acceptance or authorization to initiate services shall be considered by both parties to constitute formal acceptance of all terms and conditions of this Agreement. Unilateral modification of this Agreement subsequent to S.W.COLE's initiation of service is expressly prohibited. Furthermore, all preprinted terms and conditions on Client's purchase order or S.W.COLE's purchase order acknowledgement form are inapplicable to this Agreement and S.W.COLE's involvement in Client's project.

16. Dispute Resolution

S.W.COLE and Client agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of this date of this Agreement, except that this section shall not limit S.W.COLE's right to pursue all legal remedies for collection of its invoices.

17. Miscellaneous

- 17.1 This Agreement shall be governed and construed in accordance with the laws of the state in which the project is located.
- 17.2 Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of the Agreement or for any other purpose.
- 17.3 The Client and S.W.COLE respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such party with respect to all covenants of this Agreement. Neither the Client nor S.W.COLE shall assign, sublet or transfer any interest in this Agreement without the written

consent of the other. This section shall not, however, apply to any subrogation rights (if any) of any insurer of either party. This section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between parties.

17.4 This Agreement represents the entire and integrated agreement between the Client and S.W.COLE and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instruments signed by both Client and S.W.COLE.

17.5 Where the services include subsurface explorations, the Client acknowledges that the use of exploration equipment may alter or damage the terrain, vegetation, structures, improvements, or property at the site and Client accepts that risk. Provided that S.W.COLE uses reasonable care, S.W.COLE shall not be liable for such alteration or damage. Prior to drilling or digging on the Site, Client will furnish documents or other information to S.W.COLE that allows it to properly identify the type and location of utility lines and/or other manmade objects beneath the Site's surface. S.W.COLE will take reasonable precautions to avoid damaging man-made objects, which may include engaging a subcontractor on Client's behalf to locate manmade objects prior to drilling or digging on the Site. Client shall, to the fullest extent permitted by law, waive any claim against S.W.COLE, and indemnify, defend and hold S.W.COLE harmless from any claim or liability for injury or loss arising from damage to or contact with buried utility lines or other buried manmade objects that were not called to S.W.COLE's attention or which are not properly identified, marked or represented on drawings furnished to S.W.COLE.

17.6 The proposed language of any certificates, affidavits or certifications requested of S.W.COLE or S.W.COLE's consultants shall be submitted to S.W.COLE for review and

approval at least fourteen (14) days prior to execution. The Client shall not request certification and/or affidavits that would require knowledge or services beyond the scope of this Agreement or beyond the professional qualifications and engineering experience of S.W.COLE.

17.7 Any estimates or opinions of project or construction costs are provided by S.W.COLE on the basis of S.W.COLE's experience and represents its best judgment. Since S.W.COLE has no control over the cost of labor, materials, equipment or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids or actual project costs or construction costs will not vary from any estimates or opinions of costs prepared by S.W.COLE.

17.8 Samples for materials testing projects will be disposed of after laboratory test results have been reported. S.W.COLE will dispose of all soil, rock, water, and other samples ninety (90) days after submission of S.W.COLE's initial report. Client may request, in writing, that any such samples be retained beyond such date, and in such case S.W.COLE will ship such samples to the location designated by Client, at Client's expense. S.W.COLE may, upon written request, arrange for further storage of samples at mutually agreed storage charges. S.W.COLE will not give Client prior notice of intention to dispose of samples. S.W.COLE will not be responsible for disposing of contaminated samples.

17.9 In the course of providing services to the Client, the Client may request S.W.COLE to communicate directly with other individuals or firms involved with the project. It is understood that any such direct communication with third parties is done as a convenience to and for the sole benefit of the Client and is an extension of S.W.COLE's services to the Client. The Client expressly agrees that S.W.COLE's services, including these third party communications are



provided for the exclusive use of the Client and the Client understands and agrees that only the Client shall have a right to rely on documents, interpretations, opinions, recommendations or conclusions provided by S.W.COLE, or any consultation given in connection with S.W.COLE's services. In the event that Client requests that S.W.COLE communicate directly with a third party, including but not limited to, architects, engineers, other designers, or contractors, regarding our services or Client requests that S.W.COLE review the designs of such third parties, Client agrees to indemnify and hold S.W.COLE harmless from claims brought against S.W.COLE by those third parties arising out of or related to their use of documentation or other information provided by S.W.COLE.

K:\Contract Documents\Terms and Conditions\Terms and Conditions Rev. 02-11-14.doc