



127 E. Commerce Street, Ste. 201
Milford, MI 48381
248-676-9594 Phone
248-676-9545 Fax

October 30, 2006

Mayor Bryan K. Barnett
The City of Rochester Hills
1000 Rochester Hills, Dr.
Rochester Hills, MI 48309

Subject: Assumptions and Costs for Environmental Oversight

Dear Mayor Barnett:

I have prepared the cost estimate contained herein that will cover the expenditures for professional services related to oversight of the Adams Hamlin Development and participation on the proposed Environmental Oversight Committee over the course of the next year (approximately). Based on discussions with the Developer and the Planning Department, I have made numerous assumptions about the level of effort necessary to accommodate the City's needs. Accordingly, the assumptions may be flawed based on how future events develop but they are made based on what we know at this time.

In general, the scope of service to be provided by STS includes but is not limited to the following:

- Provide professional environmental consulting services for the City for the proposed remediation and clean up activities for the 28 +/-acre site know as Hamlin Adams (also known as the Adams Christenson Dump). The services shall include but not be limited to on site monitoring of the Developer's Consultant and their testing, removal of materials, placement of materials, and the preparation and construction of any structure intended to further the environmental remediation and clean up of the site pursuant to established and approved plans (Brownfield Plan, Act 381 Work Plan, and the Consent Judgment).
- Review and comment on any work plan prepared and submitted to MDEQ and or the City that details the proposed work to be performed by the applicant/developer.
- In addition, the City may request professional environmental consultant services to provide guidance and suggestions regarding general environmental issues in support of the Environmental Oversight Committee that has been established by the City Council.

Services shall be performed with prior authorization of the City in accordance with the fee schedule included as Attachment A in the STS General Conditions of Service.

Acceptance of Proposal

This proposal is submitted by email for your convenience. Please indicate approval of the outlined scope of work and General Conditions of Service between the City and STS Consultants, Ltd of MI PC, which are made part of this contract, by having an authorized representative of the party responsible for payment of these professional services, sign the proposal. Please return the signed copy to my attention, by fax, at 249-676-9545. In lieu of this, a purchase order referencing this proposal may be issued to STS Consultants, Ltd. as authorization to proceed.

If we are given verbal notification to proceed without first receiving a signed copy of this proposal, it will be mutually understood that both of us will, nonetheless, be contractually bound by this proposal, even in the absence of written acceptance from you. In any event, a signed copy of this proposal must be returned before a written report can be issued.

Your acceptance of this proposal indicates that the terms, conditions and provisions of this proposal are understood, including payment to STS Consultants, Ltd. Of course, should you wish to discuss the terms and conditions of this proposal, I would be pleased to do so at your convenience.

I am pleased to provide this information for you, if you have questions, require additional information or would like to change any assumptions, please do not hesitate to contact me at 248-676-9594.

Sincerely,

STS Consultants, Ltd.

Jim Anderson
Associate Scientist

ACCEPTED BY:

Firm

City of Rochester Hills

Signature

[Handwritten Signature]

Title

Bryan K. Barnett, Mayor

Date

11/9/06

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STS General Conditions of Service

STS CONSULTANTS, LTD. GENERAL CONDITIONS OF SERVICE

These General Conditions of Service, including any Supplemental Conditions of Service which are or may become applicable to the services described in STS's Proposal, are incorporated by reference into the foregoing Proposal and shall also be incorporated by reference into any Agreement under which services are to be performed by STS for the Client. No agreement or understanding, oral or written, which in any way modifies or waives these General Conditions of Service, shall be binding on STS (whether contained in the Client's purchase forms or otherwise) unless hereafter made in writing and executed by STS's authorized representative.

SECTION 1: SCOPE OF WORK

- a. The scope of work and the time schedules defined in the Proposal are based on the information provided by the Client and shall be subject to the provisions of this agreement. If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by the Client, or if the Client directs STS to change the original scope of work established by the Proposal, a written amendment to the Agreement equitably adjusting the costs, performance time, and/or terms and conditions thereunder, shall be executed by the Client and STS as soon as practicable. STS, at its discretion, may suspend performance of its services until such an Amendment has been executed and, if such an Amendment is not agreed to within a reasonable time, STS may terminate this Agreement. In the event this Agreement is terminated pursuant to this Section, the Client shall pay STS for all services performed prior to termination as set forth in Section 15c of these General Conditions of Service.

SECTION 2: BILLINGS AND PAYMENTS

- a. Payments for services and reimbursable expenses will be made on the basis set forth in the attached proposal. STS shall periodically submit invoices for services performed and expenses incurred and not previously billed. Payment is due upon receipt. For all amounts unpaid after 30 days from the invoice date, as set forth on STS's invoice form, the Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month, eighteen percent (18%) annually. The fees described in this agreement may be adjusted annually on the anniversary date of the effective date of this agreement.
- b. Payment terms are net-30-days. If the Client has objections to specific charges within an invoice, the Client shall provide STS with a clear written statement within fifteen (15) days after receipt of the invoice of any objections to the invoice or any portion or element thereof. Failure to provide such a written statement shall constitute a waiver of any such objections and acceptance of the invoice as submitted.
- c. The Client's obligation to pay for the services performed by STS under this Agreement shall not be reduced or in any way impaired by or because of the Client's inability to obtain financing, zoning, approval of governmental or regulatory agencies, or any other cause, reason, or contingency. No deduction shall be made from any invoice on account of penalty or liquidated damages nor will any other sums be withheld or set off from payments to STS. Client further agrees to pay STS any and all expenses incurred in recovering any delinquent amounts due, including, but not limited to reasonable attorney's fees, arbitration, or other dispute resolution costs, and all court costs.
- d. If any subpoena or court order is served upon STS and/or any of its staff, subconsultants or subcontractors requiring presentation of documents or the appearance of STS's staff, subconsultants or subcontractors at a trial, deposition, or for other discovery purposes arising out of STS's services performed under this Agreement, Client will pay STS's fees (if any) applicable to STS's compliance with the subpoena or court order. Fees will be based on actual units used at the standard rates in effect at time of service upon STS of the subpoena or court order. Billings shall include time and expenses incurred gathering, organizing, duplicating documents, preparing to give testimony, travel, and testifying in deposition or trial.

SECTION 3: RIGHT OF ACCESS

- a. If services to be provided under this Agreement require the agents, employees, or contractors of STS to enter onto the Project site, Client shall provide right-of-access to the site to STS, its employees, agents and contractors, to conduct the planned field observations or services.
- b. If the scope of services includes, or is amended to include, the performance of exploratory borings or test pit excavations, Client will furnish to STS all diagrams, and other information in its possession or reasonably attainable by Client indicating the location and boundaries of the site and subsurface structures (pipes, tanks, cables, sewers, other utilities, etc.) in such detail as to permit identifying, in the field, boring/test pit locations which will avoid interferences with any subsurface structures. Client shall indemnify and hold STS harmless from liability on account of damages to subsurface structures or

injury or loss arising from damage to subsurface structures, the locations of which are not indicated or are incorrectly indicated by the information provided by the Client.

- c. STS reserves the right to deviate a reasonable distance from prescribed or selected exploratory boring or test pit locations.
- d. STS shall take reasonable precautions to minimize damage to the site due to its operations, but STS has not included in its fee, and is not responsible for, the cost of restoration for any damage resulting from its operations. At the Client's request and for additional fee, STS will, to the extent reasonably practicable, restore the site to conditions substantially similar to those existing prior to STS's operations.

SECTION 4: SAFETY

- a. It is understood and agreed that, with respect to Project site health and safety, STS is responsible solely for the safe performance by its field personnel of their activities in performance of the required services. It is expressly agreed that STS's professional services hereunder do not involve any responsibility for the protection and safety of persons on and about the Project nor is STS to review the adequacy of job safety on the Project. It is further understood and agreed, and not in limitation of the foregoing, that STS shall not be in charge of, and shall have no control or responsibility over any aspect of the erection, construction or use of any scaffolds, hoists, cranes, stays, ladders, supports, or other similar mechanical contrivances or safety devices as defined and interpreted under any structural work act or other statute, regulation, or ordinance relating in any way to Project safety.
- b. Unless otherwise specifically provided in this Agreement, Client shall provide, at its expense, facilities and labor necessary to afford STS field personnel access to sampling, testing, or observation locations in conformance with federal, state, and local laws, ordinances, and regulations specifically, including, but not limited to regulations set forth in OSHA 29 CFR 1926.
- c. If, in STS's opinion, its field personnel are unable to access required locations and perform the required services in conformance with federal, state, and local laws, ordinances and regulations due to Project site conditions or operations of other parties present on the Project site, STS may, at its discretion, suspend its services until such conditions or operations are brought into conformance with applicable laws, ordinances and regulations. If, within a reasonable time, operations or conditions are not in conformance with applicable laws, ordinances, and regulations, STS may, at its discretion, terminate this Agreement. In the event that the Agreement is terminated pursuant to this Section, the Client shall pay STS for services up to the point of termination, as set forth in Section 15 of this Agreement.
- d. Current regulations promulgated by the Occupational Safety and Health Administration (OSHA) require that a "competent person" conduct inspections of excavations and review any supporting system if workers are to enter the excavations. See OSHA 29 CFR Part 1926 (Subpart P). Under the scope of work incorporated in this Agreement, STS does not provide and has not assumed any duties of inspection and/or monitoring of excavations required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P). STS has neither been assigned nor assumed the authority required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P).

SECTION 5: SAMPLES

- a. Unless otherwise specifically provided in this Agreement or amendments thereto, STS reserves the right to discard samples immediately after testing. Upon request, the samples will be shipped (shipping charges collected) or stored at the rate indicated in the fee schedule in each proposal for professional service which will be incorporated into these terms. STS's Fee Schedule for Professional Services is included with these Terms as Attachment A.

SECTION 6: REPORTS AND OWNERSHIP OF DOCUMENTS

- a. STS shall furnish up to six (6) copies of each report to Client. Additional copies shall be furnished at the rates specified in the fee schedule. With the exception of STS reports to Client, all documents, including original boring logs, field data, field notes, laboratory test data, calculations, and estimates are and remain the property of STS. Client agrees that all reports and other work product furnished to the Client not paid for in full will be returned upon demand and will not be used for any purpose, including, but not limited to design, construction, permits, or licensing.

SECTION 7: STANDARD OF CARE

- a. STS represents that it will perform its services under this Agreement in conformance with the care and skill ordinarily exercised by reputable members of the professional engineering community practicing under similar conditions at the same time in the same or similar locality.
- b. NO OTHER WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE, OR INTENDED BY THE RENDITION OF CONSULTING SERVICES OR BY FURNISHING ORAL OR WRITTEN REPORTS OF THE FINDINGS MADE.
- c. Any exploration, testing, surveys, and analysis associated with the work will be performed by STS for the Client's sole use to fulfill the purpose of this Agreement and STS is not responsible for interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys, or explorations and the information and recommendations developed by STS are based solely on the information available.

- d. STS is not responsible for supervising, directing, controlling, or otherwise being in charge of the construction activities at the Project site; or supervising, directing, controlling or otherwise being in charge of the actual work of the contractor, its subcontractors, or other materialmen or service providers not engaged by STS.

SECTION 8: HAZARDOUS SUBSTANCES

- a. Upon entering into this Agreement, the Client shall notify STS of all such hazardous substances which it knows or which it reasonably suspects are or may be present at or contiguous to the Project site or which may otherwise affect the services to be provided. Thereafter, such notification to STS shall be required as soon as practicable after the Client discovers either the presence of hazardous substances which were not previously disclosed, increased concentrations of previously disclosed hazardous substances, or facts or information which cause the Client to reasonably suspect the presence of any such hazardous substances. Hazardous substances shall include, but not be limited to, any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample and whether it exists in a solid, liquid, semi-solid, or gaseous form.
- b. If all or any part of the scope of work is to be performed in the general vicinity of a facility or in an area where asbestos, dust, fumes, gas, noise, vibrations, or other particulate or nonparticulate matter is in the atmosphere where it raises a potential health hazard or nuisance to those working in the area of such conditions, Client shall immediately notify STS of such conditions, potential health hazard, or nuisance which it knows, should know, or reasonably suspects exists and, thereafter, STS is authorized by the Client to take all reasonable measures STS deems necessary to protect its employees against such possible health hazards or nuisance. The reasonable direct cost of such measures shall be borne by the Client.
- c. Following any disclosure as set forth in the preceding paragraphs, or if any hazardous substances or conditions are discovered or reasonably suspected by STS after its services are undertaken, STS may, at its discretion, suspend its services until reasonable measures have been taken at the Client's expense to protect STS's employees from such hazardous substances or conditions. Whether or not STS suspends its services in whole or in part, the Client and STS agree that the scope of services, terms, and conditions, schedule, and the estimated fee or budget shall be adjusted in accordance with the disclosed information or condition, or STS may, at its discretion, terminate the Agreement. In the event that this Agreement is terminated pursuant to this Section, the Client shall pay STS for all services rendered prior to termination as set forth in Section 15 of these General Conditions of Service.
- d. In the event that services under this Agreement may involve or relate to hazardous substances, or constituents, including hazardous waste (as defined by federal, state, or local statutes, regulations or ordinances), whether or not involvement or relationship was contemplated at the time this Agreement was made or when services by STS began under this Agreement, the following conditions shall also be incorporated into the Agreement and be made applicable thereto:
 - d.1. In the event that samples collected by or received by STS on behalf of the Client contain hazardous substances or constituents, including hazardous waste, STS will, after completion of testing and, at Client's expense, (1) return such samples to Client, or (2) upon written request and using a manifest signed by the Client as generator, release such samples to a carrier selected by the Client to be transported to a location selected by the Client for final disposal. The Client agrees to pay all costs associated with the storage, transport, and disposal of samples. The Client recognizes and agrees that STS is acting as a bailee and at no time assumes title to said samples or substances.
 - d.2. All laboratory and field equipment contaminated in performing services under this Agreement which cannot be reasonably decontaminated shall become the property and responsibility of the Client. All such equipment shall be delivered to the Client or disposed of in a manner similar to that indicated for hazardous samples above. The Client agrees to pay the fair market value of any such equipment which cannot reasonably be decontaminated and all other costs associated with the storage, transport, and disposal of such equipment.

SECTION 9: CONSTRUCTION MONITORING SERVICES

- a. "Construction Monitoring Services" is defined as services, furnished by STS to the Client, which are performed for the purpose of evaluating and/or documenting general conformance of construction operations or completed work with Project specifications, plans, and/or specific reports of the Project. Such services may include taking of tests or collecting samples of natural or manmade materials at various locations on a project site, and making visual observations related to earthwork, foundations, and/or materials. If the services to be provided by STS under this agreement include or are amended to include Construction Monitoring Services, the provisions of this Section 9 shall be an integral part of this agreement and applicable thereto.
- b. The presence of STS field personnel will be for the purpose of providing the client with a professional service based on observations and testing of the work which is performed by a contractor, subcontractor, or other materialmen or service provider. Such services will only be those specifically requested by the Client and agreed to by STS. Discrepancies between construction operations or completed work and project requirements which are noted by STS field personnel will be referred to the Client, or the Client's representative, as designated prior to STS's involvement in the project.
- c. It is understood and agreed by the Client that the observation and testing of natural and/or man-made materials by STS in no way implies a guarantee or warranty of the work of the contractor, subcontractor, or other materialmen or service providers, and the services rendered by STS will in no way excuse such contractor, subcontractor, or other materialmen or service providers from liability in the event of subsequently discovered defects, omissions, errors or other deficiencies in their work. The presence or absence of STS on the Project site will not affect any obligation of any contractor, subcontractor, or other materialmen or service providers to perform in accordance with the specifications and plans of the

Project. The Client further understands that STS is not a quality assurance representative for any contractor, subcontractor, or other materialman or service provider on the Project.

- d. The Client agrees to supply STS with specifications, plans, and other necessary material for the Project pertinent to providing its services.
- e. Due to the nature of its services, observing and field testing the work of contractors, subcontractors, or materialmen or service providers on the Project, STS cannot always be responsible for the schedule or length of time its field personnel remain on the Project site. The time STS's field personnel spend on the Project site is dependent upon the schedule of the contractor, subcontractor or materialman, or service provider whose work they are observing and/or testing. STS shall make reasonable effort to utilize its time on the Project site judiciously, but the Client understands and agrees that any delays, cancellations, rescheduling, overtime or other construction activities that may alter the anticipated number of hours and the anticipated costs of STS on the Project site and that are beyond the control of STS field personnel are legitimate and chargeable time and will be invoiced at the rates designated in the attached fee schedules.
- f. Part-time work is defined as Construction Monitoring Services provided by STS where its field personnel are on the Project less than five (5) working days per week or less than forty (40) hours per week, or both. It is agreed that the Client will furnish STS with a minimum of one working day's notice, or twenty-four (24) hours notice, whichever is greater, on any part-time work of STS if field personnel are requested. STS shall make reasonable effort to provide field personnel on all projects, but reserves the right to schedule its field personnel as it deems appropriate, including the scheduling of different field personnel from day to day on any given part-time project of STS. The Client agrees to inform STS of the anticipated services required by STS field personnel on any day, including but not restricted to the kind and number of tests to be required and the anticipated amount of time the field personnel will be required on the Project site.
- g. The Client agrees that STS shall charge a minimum of four (4) hours for any part-time Construction Monitoring Services, regardless of the actual number of hours utilized. All field personnel charges will be made on a portal-to-portal basis. Mileage to and from the Project site will be billed at the rate designated in the attached fee schedules as will any office engineering time needed to review, evaluate or analyze the field data. All calls made by the Client or the Client's representative to cancel requested part-time STS field personnel must be received by STS in time for STS to notify field personnel before they leave for the Project site. STS will make reasonable effort to contact its field personnel as quickly as possible, but reserves the right to bill the Client the four-hour minimum charge in the event STS received a cancellation call too late for it to intercept the field personnel enroute to the Project site.

SECTION 10: OPINIONS OF COST

- a. STS's opinions of probable total Project costs and Project construction costs, if any, provided as part of the services under this Agreement are made on the basis of STS's knowledge, experience, and qualifications and represent STS's judgment as an experienced and qualified professional engineer, familiar with the construction industry; but STS cannot and does not guarantee that proposals, bids, or actual total Project costs or Project construction costs will not vary from opinions of probable cost provided by STS.

SECTION 11: SHOP DRAWINGS

- a. In the event that the scope of services includes review and approval of Shop Drawings or other data which contractor(s) are required to submit, STS's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Project plans and specifications and shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
- b. STS's review and approval of Shop Drawings or other data shall not relieve the contractor(s) from responsibility for any variation from the requirements of the plans and specifications unless the contractor(s) has, in writing, called STS's attention to each such variation at the time of submission and STS has given written approval of each such variation by a specific written notation incorporated into or accompanying the Shop Drawing or other data. Approval by STS will not relieve the contractor(s) from responsibility for errors or omissions in the Shop Drawings or other data.
- c. STS will accept Shop Drawings or other data submittals only from the contractor(s) required by the Project contract documents to furnish the Shop Drawings or data. STS will reasonably promptly review and approve, or take other appropriate action in regard to, Shop Drawings or data properly submitted to STS.

SECTION 12: ALLOCATION OF RISK

- a. IT IS AGREED THAT THE CLIENT'S MAXIMUM RECOVERY AGAINST STS FOR THE PROFESSIONAL SERVICES PERFORMED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS \$50,000 OR THE AMOUNT OF STS'S FEE, WHICHEVER IS GREATER. IT IS EXPRESSLY AGREED THAT THE CLIENT'S SOLE AND EXCLUSIVE REMEDY AGAINST STS FOR PROFESSIONAL SERVICES PERFORMED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, IS THE AWARD OF DAMAGES NOT TO EXCEED THE STIPULATED \$50,000 FIGURE, OR THE AMOUNT OF STS'S FEE, WHICHEVER IS GREATER. IN NO EVENT SHALL STS BE LIABLE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR CLIENT'S LOSS OF PROFITS, DELAY DAMAGES, OR FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING AT ANYTIME OR FROM ANY CAUSE WHATSOEVER.
- b. Documents, including but not limited to, technical reports, original boring logs, field data, field notes, laboratory test data, calculations, and estimates furnished to the Client or its agents pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Any reuse

without STS's written consent will be at Client's sole risk and without liability or legal exposure to STS or to STS's contractor(s) and Client shall indemnify and hold harmless STS and STS's contractor(s) from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

- c. Under no circumstances shall STS be liable for extra work or other consequences due to changed conditions or for costs related to failure of the construction contractor or materialmen or service providers to install work in accordance with the plans and specifications.
- d. The Client agrees at its sole cost and expense to defend and indemnify STS from and against any claim, suit, or legal proceeding, including but not limited to arbitration or mediation, (collectively "claim") arising out of the services under this agreement and asserted against STS, to the extent caused by the Client's negligent acts or omissions. The Client's obligation hereunder includes, but is not limited to the payment of attorney's fees. Court costs, and expert and consulting expenses required for the proper and vigorous defense of STS. Nothing in this Paragraph 12.d is intended to require Client to indemnify STS with respect to claims, losses, expenses or damages to the extent caused by STS' own negligent acts or omissions.
 - d.1 In no event shall continuation of Client's obligation to defend STS, as stated above, be conditional upon STS's contributing any sums of money toward settlement of any claim. In the event STS is held liable for a greater than pro rata share of any common liability for damage or injury to person(s) or property by operation of law, Client agrees to indemnify STS for those damages awarded in excess of its pro rata share.
 - d.2 In the event it is adjudicated that the event and/or damages giving rise to the claim were caused in whole or in part by the negligence of STS, Client's obligation to indemnify STS for costs of defense shall be reduced by an amount proportionately equal to the share of damages attributable to STS's negligence. STS shall reimburse Client for such proportionate defense costs incurred by client in defending STS as required by this paragraph 12.d.
- e. Notwithstanding any other provision of this Agreement, it is further agreed that to the fullest extent permitted by law the Client shall indemnify and hold harmless STS and its employees, agents, contractors and consultants from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to attorneys' fees and all Court, arbitration or other dispute resolution costs, arising out of, resulting from, or related to the presence and/or involvement of hazardous substances or constituents, including hazardous waste, at or contiguous to the Project site or contained in samples collected by or received by STS from the Project site. The indemnification set forth in this paragraph 12.e. extends to claims against STS which arise out of, are related to, or are based upon, the dispersal, discharge, escape, release, spillage or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollution in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or watercourses, (c) objects, or (d) any tangible or intangible matter, whether such event or circumstances is sudden or not. Nothing in this Paragraph 12.e. is intended to indemnify, or shall be construed as indemnifying, STS with respect to claims, losses, expenses or damages to the extent caused by STS's own negligent acts or omissions.

SECTION 13: LIABILITY INSURANCE

- a. See Attachment B for Insurance Regulations adopted from the City of Rochester Hills.

SECTION 14: DISPUTE RESOLUTION

- a. All claims, disputes, controversies or matters in question arising out of, or relating to this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "disputes") shall be submitted to mediation before and as a condition precedent to any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and STS shall select by mutual agreement a neutral mediator. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and STS within ten (10) calendar days, a mediator shall be chosen as specified in the Construction Industry Mediation Rules of the American Arbitration Association then in effect.
- b. If a dispute cannot be settled through mediation as set forth above, then such dispute shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Demand for arbitration shall be made by either party within ten (10) calendar days following termination of mediation. The date of termination of mediation shall be the date of written notice of closing of mediation proceedings issued by the mediator to each of the parties. Demand for arbitration shall be made by filing notice of demand, in writing, with the other party and the American Arbitration Association. The award rendered, if any, by the arbitrator(s) shall be final and binding on both parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- c. Notwithstanding any other provisions of this Section 14, in no event shall a demand for mediation be made more than two (2) years from the date the party making demand knew or should have known of the dispute or six (6) years from the date of substantial completion of STS's participation in the Project, whichever date shall occur earlier.
- d. All mediation or arbitration shall take place in Chicago, Illinois unless Client and STS agree otherwise. The fees of the mediator or arbitrator(s) and the costs of transcription and other costs incurred by the mediator or arbitrator(s) shall be apportioned equally between the parties.

SECTION 15: TERMINATION

- a. The term of this agreement shall be one year and shall expire one (1) calendar year from the date of execution. Additional terms may be added if it is agreed to be in the best interest of both parties. In addition, this Agreement may be terminated by either party upon at least seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof or if deemed in the best interests of the terminating party, through no fault of its own. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. The only exceptions to this seven-day written notice condition are STS's rights to terminate this Agreement as set forth in Sections 1, 4 and 8 of the Agreement.
- b. In addition, STS may terminate this Agreement if the Client suspends STS's services for more than sixty (60) consecutive days through no fault of STS.
- c. If this Agreement is terminated, STS shall be paid for services performed prior to the termination date set forth in the notice.

SECTION 16: EMPLOYMENT

- a. Client agrees that, prior to the completion of STS's services on the Project, Client and its officers, agents or employees shall neither (1) offer employment to STS's employees, (2) advise STS's employees of employment opportunities with Client, Client's parent or affiliate organization(s), if any, nor (3) inquire into employment satisfaction of STS's employees.

SECTION 17: INDEPENDENT CONTRACTOR

- a. The relationship between the Client and STS created under this Agreement is that of principal and independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity not a party hereto and no such person or entity is intended to be or shall be construed as being, a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by STS's authorized representative.

SECTION 18: SEVERABILITY

- a. In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

SECTION 19: SECTION HEADINGS

- a. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein.

SECTION 20: SURVIVAL

- a. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and STS shall survive the completion of services and the termination of this Agreement.

SECTION 21: ASSIGNS

- a. Neither the Client nor STS may delegate, assign, sublet or transfer its duties, responsibilities or interests in this Agreement without the written consent of the other party.

SECTION 22: CHOICE OF LAW

- a. This Agreement shall be governed by the law of the State of Michigan.

SECTION 23: WRITTEN NOTICE

- a. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

ATTACHMENT A

STS CONSULTANTS, LTD.

FEE SCHEDULE FOR PROFESSIONAL SERVICES

Professional Services

Charges for technical personnel will be made for time spent in the field, in consultation, in preparation of reports and invoices, in administrating contracts and project coordination, and in traveling.

Laboratory test programs will be identified in our proposals and billed out on a lump sum basis. Additional laboratory work will be billed on the following hourly basis plus expenses, expendables and equipment.

The cost of equipment to complete the project will be identified in our proposal.

Administrative support costs on the project (long distance phone calls, routine computer and reprographic services, etc.) are recovered by assessing a 2% surcharge on direct labor charges.

Technical Classifications

Principal	Per hour	\$140.00
Associate	Per hour	\$120.00
Senior Consultant	Per hour	\$103.00
Consultant	Per hour	\$ 90.00
Technical Project Staff	Per hour	\$ 78.00
CAD or Field Specialist	Per hour	\$ 65.00
Senior Technician	Per hour	\$ 50.00
Technician	Per hour	\$ 44.00
Administrative/Word Processor	Per hour	\$ 45.00

Laboratory Services

Manager	Per hour	\$ 85.00
Technician	Per hour	\$ 45.00

Expenses and Expendables

Mileage	Per Mile	\$ 0.50
All Expenses to Complete Project	Cost +	5%
Subcontracted Services	Cost +	10%
Travel, Lodging, Meals	At Cost	

Overtime will be charged after 8 hours per day Monday through Friday or all day on Saturday. The charge will be 1.25 x the standard hourly rate. Work on Sundays or Holidays will be charged at 2.0 x the standard hourly rate. Expert testimony requires its own rate sheet, and will be provided as needed.

ATTACHMENT B
INSURANCE REGULATIONS
CITY OF ROCHESTER HILLS
INCORPORATED HERETO

INSURANCE REGULATIONS

The consulting firm shall not commence work under this contract until they have obtained the insurance required under this paragraph. All coverage's shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Rochester Hills.

A new certificate of insurance shall be provided to the City each year at the time of policy renewal. Failure of the firm to maintain the required insurance shall be grounds for contract cancellation.

1. Workers' Compensation Insurance: The Contractor shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
2. Commercial General Liability Insurance: The Contractor shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000.00 per occurrence, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable; (F) per Contract Aggregate.
3. Motor Vehicle Liability: The Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than \$1,000,000.00 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
4. Umbrella Liability Insurance. The Vendor shall procure and maintain during the life of this contract Umbrella Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence.
5. Professional Liability. Errors and Omissions on a "Claims Made Basis" with limits of liability of not less than \$1,000,000.00.
6. Additional Insured. Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds "The City of Rochester Hills, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess."
7. Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following "It is understood and agreed that Sixty (60) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309."
8. If any of the above coverages expire during the term of the contract, the Vendor shall deliver renewal certificates and/or policies to the City of Rochester Hills at least ten (10) days prior to the expiration date.

INDEMNIFICATION (HOLD HARMLESS) CLAUSE

To the fullest extent permitted by law, the Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Rochester Hills, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Rochester Hills against any and all claims, demands, suits, or loss, including all costs and attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Rochester Hills, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Rochester Hills, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract.