

PUBLIC WORKS & UTILITIES COMMITTEE

13-0077R

RESOLUTION AUTHORIZING A CONTRACT WITH LHB, INC. FOR PROFESSIONAL ENGINEERING SERVICES FOR THE DESIGN OF FLOOD REPAIR OF BRIDGE NO. 88547, ARMORY AT CHESTER CREEK, IN THE AMOUNT OF \$82,901.

CITY PROPOSAL:

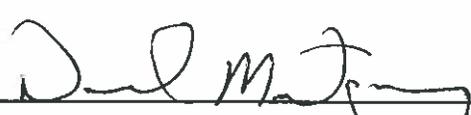
RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with LHB, Inc. for professional engineering services related to the design of flood repair of Bridge No. 88547, Armory at Chester Creek, in an amount not to exceed \$82,901, payable from Disaster Recovery Fund 225, Department/Agency 125 (Finance), Organization 1803 (Roads and Bridges), Object 5303 (Engineering Services), city project no. 1226, S.P. 118-193-002, requisition no. 13-0135.

Approved:



for Department Director

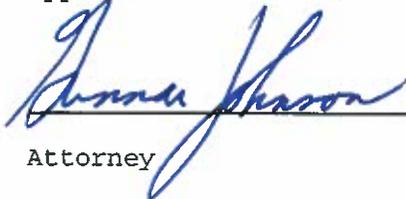
Approved for presentation to council:



Chief Administrative Officer

Purchasing Agent 

Approved as to form:



Attorney

Approved:

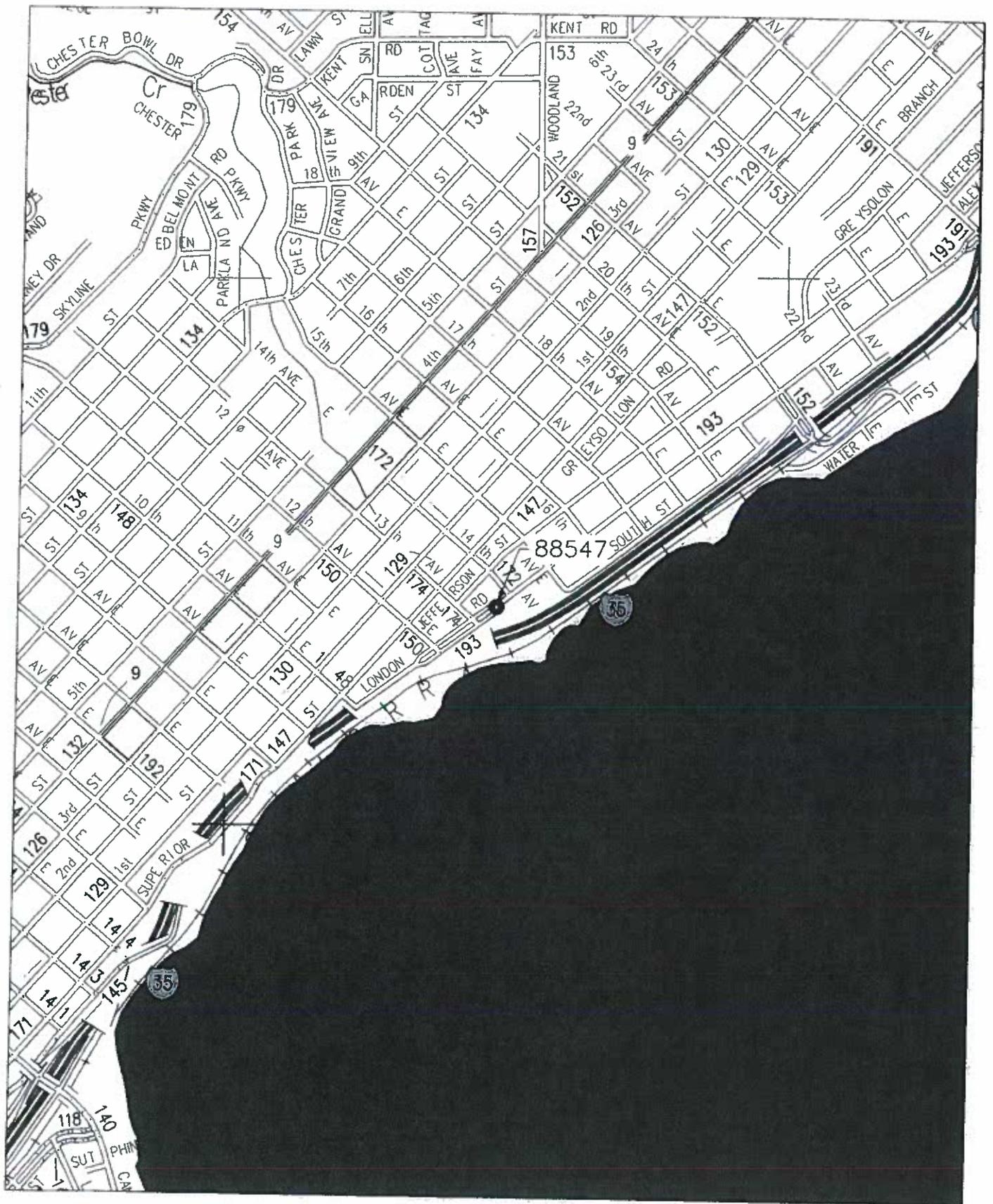


Auditor

ENG PTM:jh 2/1/2013

STATEMENT OF PURPOSE: This resolution will authorize a contract for professional engineering services for the design of flood repair of Bridge No. 88547, Armory

at Chester Creek. Costs to be reimbursed by state of Minnesota disaster funding. Disaster Recovery Fund 225, Department/Agency 125 (Finance), Organization 1803 (Roads and Bridges), Object 5303 (Engineering Services), city project no. 1226, S.P. 118-193-002, FEMA flood site no. 536, requisition no. 13-0135.



JUNE 2012 FLOOD DAMAGE ASSESSMENT
BR. 88547



21 West Superior Street, Suite 500
Duluth, Minnesota 55802
218 727-8446
Fax 218 727-8456
www.LHBcorp.com

January 16, 2013

Patrick Mlakar
City Engineering
211 City Hall
Duluth, MN 55802

**CHESTER CREEK BRIDGE 88547/ ARMORY SITE RECONSTRUCTION
JUNE 2012, FLOOD REPAIRS
SCOPING, PRELIMINARY AND FINAL DESIGN
WORKSCOPE AND PROPOSAL**

Enclosed please find our work task and financial proposal for the above defined project. We have prepared our proposal to include the following workscope, which as we understand the project today should be the necessary workscope to bring the project from concept phase through bidding.

Task 1: Project Development- Gather existing information concerning the project; prepare funding submittals; and meetings and correspondence as required through the design of the project.

Task 2: Investigative Phase- Initial field/ site investigation, topographic site survey of the exterior site with emphasis to damaged features and features as required to design access way into sub-basement; detailed site survey of subbasement interior to document damaged regions and extensive debris; coordination and scoping as required for hiring of hazardous materials investigator/ abatement designer due anticipated presence of asbestos materials within subbasement and debris; and Federal ER Report preparation.

Task 3: Preliminary Design Phase- Preparation of preliminary layout and geometric plans for the project. At this time general scope of the project is anticipated to include: creating access into the building subbasement by constructing a ramped section on the south side of the building which will access into the subbasement beneath the current west garage door entry; hazardous materials abatement and ensuing cleanup/ removal of wood, granular, silt and other debris which entered the building due the flood and loss of culvert roof structure; demolition and subsequent replacement of the failed culvert roof structure; restoration of electrical/ lighting within region of subbasement where damaged due the flood; restoration of subbasement south wall upon removal of access way; and restoration of the exterior site upon removal of access way.

Patrick Mlakar
January 16, 2013
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Task 4: Final Design/ Plans- Preparation of final design plans for the project. Plans will be prepared in accordance with City of Duluth, MnDOT and Federal plan requirements and will be submitted through MnDOT to include review, corrections and approval.

Task 5: Project Coordination- Preparation of construction cost estimates through the design phase and preparation of bid special provisions.

We appreciate the opportunity to prepare this proposal and assist the City with this project. Upon review if you have any questions please do not hesitate to call.

LHB

A handwritten signature in black ink, appearing to read "Joe Litman". The signature is written in a cursive style with a large initial "J" and "L".

JOSEPH D. LITMAN PE, PROJECT MANAGER

FEE ESTIMATE WORKSHEET

Project Name **Chester Creek Bridge 88547- Armory**

LHB Labor Summary

Client **City of Duluth**
Preparer **JDL**



Site Access, Abatement, Clean Up, Culvert Restoration, Electrical and site Restoration

Project Breakdown - Task Description	P1	P5	P8	P11	P13	T3	T8	A1	Total Labor Costs (\$)
	Project Principal	Project / Disc. Mgr.	Project Eng.	Eng. XI	Eng. XIII	Sr. Tech Designer	Intermed. Designer	Admin. Assist.	
Task 1 - Project Development	\$149	\$135	\$105	\$88	\$70	\$89	\$63	\$65	
Gather Information/ Funding Submittals		2.00	2.00			2.00			\$658
Meetings/ Correspondence (City, State)		4.00	6.00						\$1,170
Meetings/ Correspondence (Armory Staff)		3.00	4.00						\$825
Task 2 - Investigative Phase									
Initial Field Investigation		2.00	2.00	4.00					\$832
Site Survey/ Topo- Exterior			2.00			7.00	7.00		\$1,274
Site Survey/ Topo- Interior			2.00			20.00	20.00		\$3,250
Coord. With Hazard Mat'l's Invest.			2.00	2.00					\$386
Fed ER Reporting		2.00	8.00			6.00			\$1,644
Task 3 - Preliminary Design Phase									
Option/ Rehabilitation Assessment		2.00	2.00						\$480
Access Study		1.00	2.00	6.00		6.00			\$1,407
Preliminary Work Plan- Street Level		1.00	2.00	2.00		8.00			\$1,233
Preliminary Work Plan- Sub basement (1 of 2)		1.00	1.00	4.00		8.00			\$1,304
Preliminary Work Plan- Sub basement (2 of 2)		1.00	1.00	4.00		8.00			\$1,304
Preliminary Work Plan- Culvert Demolition		1.00	2.00			6.00			\$879
Preliminary Work Plan Culvert Restoration		1.00	2.00	4.00		8.00			\$1,409
Task 4 - Final Design/ Plans									
Title Sheet & Index Map			1.00	2.00		4.00			\$637
Statement of Estimated Quantities/ Notes		2.00	2.00	6.00		12.00			\$2,076
Existing Conditions Plan- Site		1.00	1.00	2.00		16.00			\$1,840
Existing Conditions Plan- Sub basement		1.00	2.00	4.00		20.00			\$2,477
Site Demolition		1.00	1.00	6.00		16.00			\$2,192
Sub basement Demolition		1.00	2.00	12.00		24.00			\$3,537
Demolition Details (2 Shts)		2.00	4.00	14.00		28.00			\$4,414
Site Access Construction Details		1.00	2.00	8.00		20.00			\$2,829
Sub basement Scoping/ Improvement Plan		1.00	2.00	8.00		16.00			\$2,473
Culvert Demolition Plan (2 Shts)		1.00	2.00	10.00		20.00			\$3,005
Culvert Demolition Details (2 shts)		1.00	2.00	10.00		20.00			\$3,005
Culvert Roof Slab Construction Plan (2 Shts)		1.00	2.00	12.00		24.00			\$3,537
Culvert Roof Slab Reinforcing (2 Shts)		1.00	2.00	16.00		28.00			\$4,245
Culvert Roof Slab Details (2 Shts.)		1.00	2.00	18.00		28.00			\$4,421
Site Erosion Control				1.00		6.00			\$622
Site Restoration Plan		1.00	2.00	4.00		14.00			\$1,943
Site Restoration Details			2.00	4.00		10.00			\$1,452
Traffic Control Plan				1.00		6.00			\$622
Electrical Schedule		4.00				12.00			\$1,608
Sub basement Electrical/ Lighting Plan		8.00				20.00			\$2,860
Electrical Wiring Diagram, Panel, Schematics (2 Shts)		12.00				16.00			\$3,044
									\$0
Task 5 - Project Coordination									\$0
Construction Cost Estimating		6.00		4.00		4.00			\$1,518
Special Provisions		12.00		6.00					\$2,148
Total Hours	0	79	71	174	0	443	27	0	
Travel	Miles	# Trips	Rate	Cost	Direct Costs	Cost	Labor		\$74,560
					Survey Equip	\$300	Travel Costs		\$0
					Environmental	\$8,041	Direct Costs		\$8,341
					(Twin Ports Test'g)				
Total Travel Costs				\$0	Total Direct	\$8,341			
Total Not To Exceed Cost									\$82,901



1301 N 3rd St • Superior WI 54880 • 715-392-7114 • 800-373-2562 • F 715-392-7163 • www.twinportstesting.com

January 21, 2013

TPT #13P-H09

Joe Litman
 LHB Architects
 21 West Superior Street #500
 Duluth, MN 55802

**Re: Various Asbestos Sampling
 Army Arts & Music Center
 1626 London Road
 Duluth, Minnesota**

Dear Mr. Litman

Twin Ports Testing, Inc. (TPT) is pleased to provide you with this price quotation for conducting the above mentioned services at your facility in Duluth, MN. Associated costs for these monitoring would be as follows:

Item	Unit Cost	Total Cost
Background Sampling		
Background Air Sampling & Analysis	4 hours @ \$80.00/hour	\$ 320.00
Air Sampling Pumps/cassettes	5 pumps @ \$20.00 each (½ day)	\$50.00
Summary Letter Report	2 hours @ \$80.00/hour	\$160.00
Trip Charge	1 trip @ \$25.00/trip	\$25.00
Air Monitoring During Surveying		
On-site air sampling & analysis	3 days, 8 hours/day @ \$80.00/hour	\$1,920.00
Air Sampling Pumps	5 @ \$ 20.00/ea, 3 days	\$ 300.00
Letter Report with results	4 hours @ \$80.00/hour	\$320.00
Trip	3 @ \$ 25.00	\$ 75.00
Asbestos Bulk Sampling		
On-site Sampling	4 hours @ \$80.00/hour	\$320.00
Asbestos Bulk Sample Analysis	~12 samples @ \$12.60/sample	\$151.20
Final Report	4 hours @ \$80.00/hour	\$320.00
Abatement Specification		
Specification Preparation	40 hours @ \$85.00/hour	\$3,400.00
Bidding Forms & Documentation	8 hours @ \$85.00/hour	\$680.00
Total:		\$ 8,041.20

This proposal is subject to the General Conditions of Service, a copy of which is attached hereto and made a part of this proposal. Included as part of these conditions, the project will be billed upon completion and due thirty days after the date on the invoice.

If you have any questions regarding this proposal please give me a call at your convenience.

Sincerely,

Twin Ports Testing, Inc.

A handwritten signature in cursive script that reads "Tracy Jacobs".

Tracy Jacobs, CHMM
Senior IH Project Manager

This proposal is subject to the General Conditions of Service, a copy of which is attached hereto and made a part of this proposal. Included as part of these conditions, project billing will be progressive, once per month, and due thirty days after the date on the invoice.

If you agree to accept this proposal, along with the General Conditions of Service, please sign and return to us to use as our authorization to proceed with this project.

Signature _____
Date _____
Printed Name _____
Title _____
Company _____



General Conditions of Service

These General Conditions of Service, including any Supplemental Conditions of Service which are or may become applicable to the services as set forth in the foregoing Proposal, are incorporated by reference into said Proposal and shall, if said Proposal is accepted by Client, be part of the Agreement ("Agreement") under which services are to be performed by Twin Ports Testing, Inc. In the event of a conflict between these General Conditions of Service, any Supplemental Conditions of Service, and the foregoing Proposal, the terms in the Proposal control.

1. SCOPE OF WORK

- (a) It is understood that the scope of work and time schedule defined in the Proposal are based on the information provided by Client. If this information is incomplete or inaccurate, or if unexpected site conditions are discovered, the scope of work and time schedule may change even as the work is in progress. If Client requests additional services or a change in the scope of work or time schedule occur, a written amendment to the Agreement shall be executed by Client and Twin Ports Testing, Inc. within seven (7) calendar days of receipt of such request or discovery of a change in scope or time schedule of work. Client's consent to such an amendment shall not be unreasonably withheld. In the event Client unreasonably fails to consent to such amendment, Client shall be in breach of the Agreement and Twin Ports Testing, Inc. may immediately discontinue its work and seek recovery of all damages suffered.
- (b) The scope of work shall include all services provided by Twin Ports Testing, Inc., in its discretion, which are reasonably necessary and appropriate for the effective and timely fulfillment of Twin Ports Testing, Inc.'s obligations under the Agreement. All services provided by Twin Ports Testing, Inc. shall be subject to the provisions of the Agreement. All services provided by Twin Ports Testing, Inc. shall be invoiced and paid in accordance with Section 3 below.

2. CLIENT DISCLOSURES

- (a) Client shall notify Twin Ports Testing, Inc. of any known or suspected hazardous substances or conditions which Twin Ports Testing, Inc. may be provided or obtain or which exist or may exist on or near any premises upon which services are to be performed by Twin Ports Testing, Inc.'s employees, agents or contractors. Such hazardous substances shall include but not be limited to any substance which poses or may pose a present or future 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, in piping, electrical cables or similar objects, whether above ground or below ground. Such hazardous substances shall also include any substance which poses or may pose a present or future hazard to human health or the environment. Client shall notify Twin Ports Testing, Inc. of any known or suspected hazardous substances or conditions upon entering into the Agreement. Thereafter, Client shall notify Twin Ports Testing, Inc. of any other known or suspected hazardous substances or conditions immediately upon discovering them, or upon discovery of increased concentrations of previously disclosed substances where the increased concentration makes such substances hazardous.
- (b) Following any disclosure as set forth in Section 2(a) above, or if any hazardous substances or conditions are discovered or reasonably suspected to be present by Twin Ports Testing, Inc. after its services are undertaken, Twin Ports Testing, Inc. may, at its discretion, discontinue its services without further duties, obligations or liabilities of any kind. Whether or not Twin Ports Testing, Inc. discontinues its services in whole or in part, Client and Twin Ports Testing, Inc. agree that the scope of work, time schedule and the estimated fee or budget shall be adjusted accordingly, and Twin Ports Testing, Inc. may, at its discretion, terminate the Agreement without any further duties, obligations or liabilities under the Agreement. In the event that the Agreement is terminated pursuant to this Section 2, Client shall pay Twin Ports Testing, Inc. for all services provided and all termination expenses as set forth in Section 11(b) below.
- (c) 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 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 vicinity, Client shall notify Twin Ports Testing, Inc. of such condition, potential health hazard or nuisance, and thereafter Twin Ports Testing, Inc. shall take all reasonable measures deemed necessary to protect its employees, agents and consultants against such condition, potential health hazard or nuisance. Client shall be solely responsible for the cost of such measures.

3. PAYMENT, INTEREST AND BREACH

- (a) Client shall pay all invoices in full on receipt, and shall pay applicable interest on unpaid balances beginning thirty (30) days after the invoice date at the rate of 1.5% per month, but not to exceed the maximum rate allowed by applicable law.
- (b) In the event that Client fails to pay an invoice in full within sixty (60) calendar days after the invoice date, Client shall be in breach of the Agreement. Twin Ports Testing, Inc. may, at its option, immediately terminate the Agreement without any further duties, obligations or liabilities under the Agreement. In the event that the Agreement is terminated pursuant to this Section 3(b), Client shall pay Twin Ports Testing, Inc. for all services

4. ACCESS AND RESTORATION

Client shall furnish Twin Ports Testing, Inc. with reasonable access to the site at all reasonable times. It is understood by Client that in the normal course of the work some damage to the site and/or materials may occur. While Twin Ports Testing, Inc. will take reasonable precautions to minimize damage, Twin Ports Testing, Inc. has not included the cost of restoration in the estimated fee or budget and will not

be liable for such damage. Twin Ports Testing, Inc. has no obligation to restore the site to its original condition. At Client's option, Twin Ports Testing, Inc. will restore the site and invoice Client for the cost of restoration.

5. SAMPLES

All samples, if any, remaining after tests are conducted will in the ordinary course be discarded by Twin Ports Testing, Inc. sixty (60) calendar days after submission of the final written report to Client unless Client requests, in writing, that Twin Ports Testing, Inc. store or ship the samples, at Client's expense. Any such request shall be sent via certified mail, return receipt requested, to Twin Ports Testing, Inc., Attn: Chief Operations Officer, 1301 North Third Street, Superior, Wisconsin 54880, and must be received within the 60-day period.

6. REPORTS, OWNERSHIP OF DOCUMENTS AND WITNESS FEES

- (a) Twin Ports Testing, Inc. shall furnish one (1) copy of each report to Client. Additional copies shall be furnished at the rates specified in the Proposal or attached fee schedule. With the exception of Twin Ports Testing, Inc.'s final written report to Client, all documents, including original boring logs, field data, field notes, laboratory test data, calculations and estimates are and remain the property of Twin Ports Testing, Inc. Client agrees that all reports and other documents furnished to Client and invoiced, but not paid in full within sixty (60) calendar days after the invoice date, will be returned to Twin Ports Testing, Inc. immediately upon demand and will not be used for design, construction, permits, licensing or any other purpose.
- (b) At its discretion, Twin Ports Testing, Inc. may retain principal documents, reports, lab data, etc., relating to the services performed for Client for up to five (5) years following submission of the final written report to Client.
- (c) In the event an employee of Twin Ports Testing, Inc. is required to provide deposition or trial testimony in regard to work performed for Client by Twin Ports Testing, Inc., Client agrees to pay Twin Ports Testing, Inc., two times the hourly rate of the contracted services for each hour spent by such employee preparing for, traveling portal to portal and attending the deposition and/or trial, with a minimum four hour charge, and shall also pay mileage at the I.R.S. rate and all out-of-pocket expenses incurred.

7. STANDARD OF CARE

- (a) Twin Ports Testing, Inc. represents that the services performed under the Agreement will be performed with the care and skill ordinarily exercised by reputable members of the applicable profession practicing under similar conditions at the same time in the same or a similar locality.
- (b) With the exception of Section 7(a) above, no other representation and no warranty, expressed or implied, is made or intended by Twin Ports Testing, Inc. with respect to its performance of services under the Agreement.
- (c) In regard to subsurface investigations, the Client recognizes that subsurface conditions at the site may vary from those encountered in Twin Ports Testing, Inc.'s explorations, testing and surveys, and that the information and recommendations developed by Twin Ports Testing, Inc. are based solely on the work performed by Twin Ports Testing, Inc.
- (d) Any exploration, testing, surveys and analysis associated with the work will be performed by Twin Ports Testing, Inc. for Client's sole use. Twin Ports Testing, Inc. shall not be responsible or liable for others' interpretation or use of the information developed from the work performed by Twin Ports Testing, Inc.
- (e) Documents including but not limited to technical reports, original boring logs, field data, field notes, laboratory test data, calculations and estimates furnished to Client or its agents pursuant to the Agreement are not intended or represented to be suitable for reuse by Client or others on extensions of the project or on any other project. Twin Ports Testing, Inc. shall not be responsible or liable for any reuse of such documents.
- (f) Twin Ports Testing, Inc. shall not be responsible or liable for the work performed by others, including but not limited to the failure of others to perform their work in accordance with specifications or contract documents.
- (g) For work not performed on Twin Ports Testing, Inc.'s premises, Twin Ports Testing, Inc. shall not be responsible or liable for superintending, supervising or in any way directing the work of others, or for job or site safety, all such matters shall be the sole responsibility of others as determined by Client, unless specifically assumed by Twin Ports Testing, Inc. in writing.
- (h) Twin Ports Testing, Inc. shall not be responsible or liable for either setting or checking the accuracy of construction staking, or for staking or referencing locations of piling, caissons or footings, unless those functions are specifically assumed by Twin Ports Testing, Inc. in writing. Twin Ports Testing, Inc. shall rely on as accurate and reference results of tests and observations to control lines and elevations set as part of surveying or construction staking performed by others selected by Client.
- (i) Client shall be solely responsible for ensuring that its employees, contractors and subcontractors observe all applicable safety standards.

8. LIMITATION OF PROFESSIONAL LIABILITY

- (a) Twin Ports Testing, Inc.'s total liability to Client for damages of whatever nature (including expenses such as court costs and attorneys' fees), on account of work performed or to be performed by Twin Ports Testing, Inc., including but not limited to design defects, breach of contract, errors, omissions, or professional negligence, is limited to a sum not to exceed in the aggregate \$50,000.00 or the amount of Twin Ports Testing, Inc.'s estimated fee, whichever is less.
- (b) Client shall notify in writing any contractor or subcontractor who may perform work in connection with any work performed by Twin Ports Testing, Inc. that any claim for damages against Twin Ports Testing, Inc. such contractor or subcontractor may have is also subject to the limitation on liability set forth in section 8(a) above and is included as part of the stated maximum amount recoverable from Twin Ports Testing, Inc. Client shall require as a condition precedent to any contractor's or subcontractor's performance of work agreement in writing to such limitation of liability on their part as against Twin Ports Testing, Inc. A copy of such agreement shall be provided to Twin Ports Testing, Inc. before the contractor or subcontractor commences work.
- (c) Documents, including but not limited to, technical reports, original boring logs, field data, field notes, laboratory test data, calculations, and estimates provided 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 such use without Twin Ports Testing, Inc.'s prior written consent is prohibited and at Client's sole risk and without liability to Twin Ports Testing, Inc. or its contractor(s) and subcontractor(s). Client agrees to

indemnify, defend and hold harmless Twin Ports Testing, Inc. and Twin Ports Testing, Inc.'s contractor(s) and subcontractor(s) from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom.

9. INDEMNIFICATIONS AND LIMITATION OF LIABILITY

- (a) Twin Ports Testing, Inc. shall indemnify, defend and hold harmless Client from and against bodily injury and property damage losses resulting solely from the gross negligence of Twin Ports Testing, Inc., its employees, agents or consultants in the performance of services under this Agreement. Such liability however shall be limited as provided in Sections 8(a) and (b) above and any provisions of the Agreement applicable to services involving or related to hazardous substances or conditions, including hazardous waste.
- (b) Client shall indemnify, defend and hold harmless Twin Ports Testing, Inc. from and against any and all other claims, losses, damages, liability and costs (including court costs and attorneys' fees) arising out of or related to the Agreement and its performance, except only such liability as is set forth in Sections 8(a) and (b) and Section 9(a) above. Such liability shall be limited in accordance with Sections 8(a) and (b) above and any provisions of the Agreement applicable to services involving or related to hazardous substances or conditions, including hazardous waste.

10. INSURANCE

Twin Ports Testing, Inc. represents that it has Workers' Compensation insurance for its employees and adequate general liability insurance. Twin Ports Testing, Inc. will furnish certificates of insurance to Client upon request.

11. TERMINATION

- (a) The Agreement may be terminated in the following ways:
 - (i) By either Twin Ports Testing, Inc. or Client upon seven (7) business days' written notice in the event of breach of the Agreement (other than the breach described in Section 3(b) above) by the other party. Such termination shall not be effective if the breach is remedied before expiration of the period specified in the written notice.
 - (ii) By Twin Ports Testing, Inc. immediately under circumstances described in Section 2(b) above.
 - (iii) By Twin Ports Testing, Inc. immediately under circumstances described in Section 3(b) above.
 - (iv) By Twin Ports Testing, Inc. immediately if conditions exist which were not disclosed to Twin Ports Testing, Inc. prior to its arrival at the site and which make it materially more difficult than anticipated to perform the work.
 - (v) By either Twin Ports Testing, Inc. or Client by mutual written agreement.
- (b) In the event the Agreement is terminated by either party, Twin Ports Testing, Inc. shall be paid for all work performed prior to the termination date set forth in the notice plus termination expenses. Termination expenses shall include personnel and equipment rescheduling and reassignment adjustments and all other costs incurred by Twin Ports Testing, Inc. as a direct result of the termination.

12. MODIFICATION AND WAIVER

No purported modification or waiver of any provision of the Agreement shall be binding unless in writing signed by both parties (in the case of modifications). Any waiver shall be limited to the circumstances or events specifically referenced in the writing and shall not be deemed a waiver of any other provision hereof or of the same circumstance or event upon any recurrence thereof.

13. SEVERABILITY

If any part of the Agreement is determined by a court of last resort, or a lower court if no appeal is taken, to be unlawful, invalid, or otherwise unenforceable, the balance of the Agreement shall remain in full force and effect, and the offending provision shall be deemed amended to the extent necessary to conform to the law.

14. SECTION HEADINGS

The headings or titles in the Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions of the Agreement.

15. SURVIVAL

All obligations arising prior to the termination of the Agreement and all provisions of the Agreement allocating responsibility or liability between Client and Twin Ports Testing, Inc. shall survive the completion of services and the termination of the Agreement.

16. CHOICE OF LAW

The Agreement shall be governed by the laws of the State of Minnesota and any proceedings involving this Agreement, its enforcement, construction or otherwise shall be venued in Duluth, Minnesota.