

**RESOLUTION NO. 1797**

**A RESOLUTION OF THE CITY OF NEVADA MISSOURI, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH GEOTECHNOLOGY, LLC FOR GEOTECHNICAL EXPLORATION AT THE WATER TREATMENT PLANT**

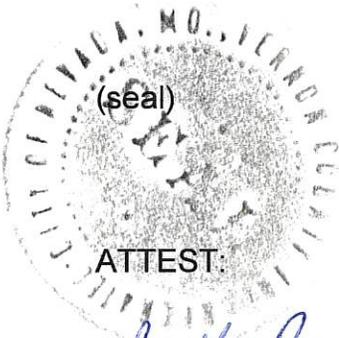
**WHEREAS**, the agreement attached described as Exhibit "A" and incorporated by reference is approved as a contractual obligation to the City of Nevada, Missouri; and

**WHEREAS**, a proposal was received in the amount of \$7,000 for two additional soil borings under the proposed location for the chemical storage building addition; and

**WHEREAS**, the City Manager or his designee is hereby directed to execute any and all documents related to said proposal.

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of Nevada authorizes the execution of an agreement with Geotechnology, LLC for geotechnical exploration at the water treatment plant.

**PASSED, APPROVED AND ADOPTED**, by the City Council of the City of Nevada, Missouri on this 6th day of August 2024.



(seal)

ATTEST:

Cynthia Dye  
CYNTHIA DYE, CITY CLERK

George C. Knox  
GEORGE C. KNOX, MAYOR

**AGENDA ITEM**  
August 6, 2024

Subject: Geotechnical Exploration for the Water Treatment Plant

Department: Water Treatment Plant

**Department Notes:**

- Notes from the Engineering firm: We are continuing to move the Water Treatment Plant design forward, including the structural design elements of the proposed Chemical Storage Building Addition. More specifically, we were able to obtain a copy of the previous Geotechnical Report prepared for Black and Veatch back in 2020. Unfortunately, as we reviewed this document, we've noticed that they did not include any soil borings in the immediate location of the newly proposed building location. Based on the previous geotechnical report findings, **we strongly recommend that the City contract with UES for at least 2 additional soil borings under the proposed location of two of the larger bulk storage tanks.**



July 25, 2024

Mary Wilson  
City of Nevada, Missouri  
110 S Ash Street  
Nevada, Missouri 64772

RE: Proposal for Geotechnical Exploration  
Proposed WTP Chemical Storage Building  
1300 W Cherry Street  
Nevada, Missouri  
UES Proposal No. P034184.02

Dear Ms. Wilson,

Geotechnology, LLC, dba UES (UES) is pleased to submit this proposal to perform a geotechnical exploration for the referenced project. We have prepared this proposal based on our recent email correspondence with representatives of Allgeier, Martin and Associates, Inc. and our experience at the Nevada water treatment plant. A copy of "Important Information about This Geotechnical Engineering Proposal" that is published by the Geoprofessional Business Association (GBA) is enclosed for your review.

### **1.0 PROJECT INFORMATION**

The project includes the construction of a chemical storage building on the grounds of the Nevada, Missouri water treatment plant. The chemical storage building will abut the south side of the existing building and have an overall footprint of approximately 55 feet by 35 feet. The chemical building will be of masonry construction with a slab-on-grade. A portion of the building that houses the three bulk storage tanks will be recessed to a depth of 4 feet. The tanks will range in diameter from 7 to 9.5 feet and have a maximum full weight of 72 kips. Each tank will be supported on a mat slab that will have a design pressure of approximately 300 pounds per square foot (psf). Planned grades near existing grades have been assumed for the purpose of preparing this proposal. Based on our previous experience at the site, the planned chemical storage building area is grassed and at approximately El 877<sup>1</sup>.

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<sup>1</sup> Elevations herein are in feet and reference 1988 North American Vertical Datum (NAVD88)



Previous Exploration. Geotechnology performed a geotechnical exploration at site in 2019. Geotechnology's scope of service included drilling three borings, excavating two test pits, laboratory testing, engineering analyses and preparation of a report<sup>2</sup> with geotechnical recommendations for the design and construction of the plant improvements. The results of the previous exploration were used in the preparation of this proposal.

Tank backfill occurred at Test TP-2, which was excavated just east of the footprint of the planned chemical storage building. This test pit was terminated at bucket refusal on a concrete slab at a depth of approximately 6 feet.

## **2.0 SCOPE OF SERVICES**

As requested, UES' proposed scope of service includes a total of two borings, laboratory testing, engineering evaluation and reporting. The provided boring location is attached. Our proposed scope of services includes the following:

- Each boring will be sampled to a depth of 15 feet. If auger refusal on coarse material occurs above the planned depth, up to two offset borings will be performed. Rock coring is not planned.
- Soil sampling will be performed using split-spoon and Shelby tube sampling techniques at 2.5-foot intervals in the upper 10 feet and at 5-foot intervals thereafter.
- Borings will be backfilled with auger cuttings after completion of drilling. Excess auger cuttings will be spread at the ground surface.
- A representative of UES will approximately locate the borings in the field relative to site features. Measurement of the boring locations by a professional surveyor is recommended.
- UES will contact Missouri One-Call for member companies to locate public utilities in proximity to the borings prior to drilling. Missouri One-Call will not mark private utilities. We request private utilities at the site be marked prior to drill rig mobilization. UES can perform this service if desired.
- A full-time geologist or engineer will be on site during drilling to coordinate access with property owner(s), oversee and manage the sample collection and soil/bedrock identification process, provide direction during exploration, prepare boring logs of the material encountered, and transport samples to our laboratory for further testing.
- Laboratory testing will include moisture content, Atterberg limits, unconfined compression strength and dry unit weight determination.

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<sup>2</sup> *Geotechnical Exploration, Water Treatment Plant Improvements, Nevada, Missouri.* Prepared for Black & Veatch Corporation by Geotechnology, Inc. Report date March 19, 2020 and Geotechnology Project No. J034184.01.



- A report will be prepared that summarizes the results of the borings, laboratory tests, and engineering analyses, and provides geotechnical design and construction recommendations, including the following:
  - A discussion of our understanding of the project.
  - A boring location plan.
  - General geologic information, including the depth to auger refusal material, if encountered.
  - Comments regarding existing fill, if encountered.
  - Site grading considerations, including an evaluation of the suitability for reuse of the on-site soils.
  - Shallow foundation recommendations, including allowable bearing pressure, estimated settlement, design frost depth, and values to resist uplift and lateral loads. Settlement analyses will be based on the results of the boring and laboratory data, and correlations of soil index properties to consolidation parameters.
  - Lateral earth pressures and drainage considerations for below-grade walls.
  - Seismic site class per the 2018 International Building Code (IBC). Seismic site class will be evaluated using N-values and undrained shear strengths in accordance with Chapter 20 of ASCE 7-16; site-specific and dynamic response analysis is not planned.
  - Remediation of subgrade soils with volume change potential, if required.
  - Floor slab recommendations
- The report will be distributed in pdf format to Allgeier, Martin and Associates, Inc.

Drill rig access to boring locations in unpaved areas might leave ruts in the soil or grass. Our scope does not include restoration of ruts or other disturbances caused by the drill rig. As a measure to reduce the potential for disturbance, UES will mobilize a lower ground pressure all-terrain drill rig and attempt to perform the work when ground conditions are dry.

### **3.0 SCHEDULE AND FEE**

Coordination of the boring locations and utility notifications will take four days to complete. Drilling will take one day. The geotechnical exploration report will be issued approximately three weeks following completion of the fieldwork. Results of the exploration can be discussed throughout the course of the project as tests and analyses are completed.

Our services are offered in accordance with the accompanying Terms. The cost of our services will be a lump sum fee of Seven Thousand Dollars (\$7,000.00). This sum includes mobilization of an all-terrain drill rig; drilling and soil sampling at two locations; professional logging; laboratory testing; boring log preparation; engineering analyses, and report preparation.



If shallow refusal on coarse material occurs, an additional allowance of One Thousand Dollars (\$1,000.00) is recommended for up to two offset borings at each location (i.e., four total). UES will notify a representative of the City of Nevada before proceeding with the offset borings.

This proposal and fee estimate have been prepared using UES' standard fee schedule and with the assumption that the attached Terms will be used as the contract mechanism. UES reserves the right to revise this proposal and fee estimate, at any time, if any flow down and/or contract provisions are required by the Client or the Owner to conform with any local, state, or federal wage act requirements, including, but not limited to, the Davis-Bacon Act, as Amended, the McNamara-O'Hara Service Contract Act, etc., the required use of union labor, or for any required safety, security, vehicle, drug and alcohol testing, or for any third party payment fees, or for other requirements not specified in the Client's request for proposal or not defined in UES' scope of services.

#### 4.0 ACCEPTANCE

If this proposal, including the contractual terms, is acceptable please sign in the space provided on the following Terms and return one executed copy of the Terms and this proposal to our office as your authorization for us to proceed.

\* \* \* \* \*

Thank you for this opportunity to provide this proposal. If you have further questions or comments, or if we may be of another service to you, please contact the undersigned.

Sincerely,

**UES**

A handwritten signature in blue ink that reads "Matt McQuality". The signature is written in a cursive style.

Matt McQuality, P.E.  
Office Lead

MHM/JAW:mhm/sem

Enclosures: GBA's Important Information about This Geotechnical Engineering Proposal  
Boring Location Plan (Provided by Allgeier, Martin and Associates, Inc.)  
Terms for Geotechnology's Services

## Important Information about This

# Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

### Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

### Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

### Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation*

is an offer to better manage your risk. Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk "Catch-22" situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report's recommendations when another firm performs the services needed to evaluate the recommendations' adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project's geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

### **Realize That Geoenvironmental Issues Have Not Been Covered**

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

### **Obtain Professional Assistance To Deal with Mold**

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project *is not* a mold prevention consultant; *none of the services being offered have been designed or proposed for the purpose of mold prevention.*

### **Have the Geotechnical Engineer Work with Other Design Professionals and Constructors**

Other design team members' misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by having your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members' plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

### **Read Responsibility Provisions Closely**

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled “limitations,” many of these provisions indicate where geotechnical engineers’ responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal’s provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

### **Rely on Your Geotechnical Engineer for Additional Assistance**

Membership in the Geoprofessional Business Association (GBA) exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with a GBA-member geotechnical engineer for more information. Confirm a firm’s membership in GBA by contacting GBA directly or at its website.



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# TERMS FOR GEOTECHNOLOGY'S SERVICES

## 1 - THE AGREEMENT

- a. This AGREEMENT is made by and between: **Geotechnology, LLC (Geotechnology)**, hereinafter referred to as GEOTECHNOLOGY, and **City of Nevada, Missouri**, hereinafter referred to as CLIENT.
- b. The AGREEMENT between the parties consists of these TERMS, the attached PROPOSAL identified as Proposal No. **P034184.02**, dated **July 25, 2024** and any exhibits or attachments noted in the PROPOSAL. In the event of a conflict between the TERMS and the PROPOSAL, the provisions of the TERMS shall govern unless the PROPOSAL specifically indicates that it is to govern. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.
- c. This proposal is valid for 30 days from **July 25, 2024**.
- d. The technical pricing information contained in this PROPOSAL submitted by GEOTECHNOLOGY is to be considered confidential and proprietary and shall not be released or otherwise made available to any third party without the express written consent of GEOTECHNOLOGY.
- e. It is intended by the parties to this AGREEMENT that GEOTECHNOLOGY'S services in connection with the project shall not subject GEOTECHNOLOGY'S individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against GEOTECHNOLOGY, a Missouri corporation, and CLIENT expressly waives CLIENT'S rights against any of GEOTECHNOLOGY'S employees, officers or directors.

## 2 - STANDARD OF CARE

- a. CLIENT recognizes that conditions may vary from those observed at locations where borings, surveys, observations, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by GEOTECHNOLOGY will be based solely on information available to GEOTECHNOLOGY. GEOTECHNOLOGY is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.
- b. GEOTECHNOLOGY offers different levels of services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive services yield more information and reduce the probability of error, but at increased cost. CLIENT has reviewed the scope of services and has determined that it does not need or want a greater level of service than that being provided.
- c. The standard of care for all professional engineering and related services performed under this AGREEMENT will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. GEOTECHNOLOGY makes no warranties, express or implied, under this AGREEMENT or otherwise, in connection with any services performed or furnished by GEOTECHNOLOGY.

## 3 - SITE ACCESS AND SITE CONDITIONS

- a. CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for GEOTECHNOLOGY to perform the services set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted GEOTECHNOLOGY free access to the site. GEOTECHNOLOGY will take reasonable precautions to reduce damage to the site, but it is understood by CLIENT that, in the normal course of the services, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.
- b. Unless indicated otherwise in the PROPOSAL, CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities. GEOTECHNOLOGY will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against GEOTECHNOLOGY arising from damage done to subterranean structures and utilities not identified or accurately located.

## 4 - CHANGED CONDITIONS

- a. If, during the course of performance of this AGREEMENT, conditions or circumstances are discovered which were not contemplated by GEOTECHNOLOGY at the commencement of this AGREEMENT, GEOTECHNOLOGY shall notify CLIENT in writing of the newly discovered conditions or circumstances, and CLIENT and GEOTECHNOLOGY shall renegotiate, in good faith, the terms and conditions of this AGREEMENT.

## 5 - SAMPLES AND CUTTINGS

- a. GEOTECHNOLOGY will dispose of soil and rock samples ninety (90) days after submittal of the report covering those samples. Further storage or transfer of samples can be made at CLIENT'S expense upon CLIENT'S prior written request.
- b. Cuttings, rinse water, well development and other wastes will be left on site and are CLIENT'S responsibility to dispose unless specifically addressed in the PROPOSAL.
- c. CLIENT shall take custody of all monitoring wells, probe holes and borings installed by GEOTECHNOLOGY and shall take any and all necessary steps for the proper maintenance, repair or closure for such wells, probes, or borings at CLIENT'S expense.

## 6 - OBSERVATION

- a. CLIENT recognizes that unanticipated or changed conditions may be encountered during construction and, principally for this reason, CLIENT shall retain GEOTECHNOLOGY to observe construction when GEOTECHNOLOGY has provided engineering services. CLIENT understands that construction observation is conducted to reduce – not eliminate – the risk of problems arising during construction and that provision of the service does not create a warranty or guarantee of any type. In all cases, contractors shall retain responsibility for the quality and completeness of their work and for adhering to the plans, specifications, and

recommendations on which their work is based. Should GEOTECHNOLOGY for any reason not provide construction observation during the implementation of GEOTECHNOLOGY'S plans, specifications, and recommendations, or should CLIENT restrict GEOTECHNOLOGY'S assignment of observation personnel, CLIENT shall, to the fullest extent permitted by law, waive any claim against GEOTECHNOLOGY, and indemnify, defend, and hold GEOTECHNOLOGY and its affiliated companies harmless from any claim or liability for injury or loss arising from field problems allegedly caused by findings, conclusions, recommendations, plans, or specifications developed by GEOTECHNOLOGY.

- b. If GEOTECHNOLOGY is retained by CLIENT to provide a site representative for the purpose of monitoring specific portions of construction work or other field activities as set forth in the PROPOSAL, then this paragraph applies. For the specified assignment, GEOTECHNOLOGY will report observations and professional opinions to CLIENT. No action of GEOTECHNOLOGY'S site representative can be construed as altering any AGREEMENT between CLIENT and others. GEOTECHNOLOGY will report to CLIENT observed conditions related to services for which GEOTECHNOLOGY has been retained to perform which, in GEOTECHNOLOGY'S professional opinion, do not conform with plans and specifications. GEOTECHNOLOGY has no right to reject or stop work of any agent of the CLIENT. Such rights are reserved solely for CLIENT. Furthermore, GEOTECHNOLOGY'S presence on site does not in any way guarantee the completion or quality of the work of any party retained by CLIENT to provide field or construction-related services.
- c. GEOTECHNOLOGY shall not be required to sign any document, no matter by whom requested, that would result in GEOTECHNOLOGY having to certify, guarantee, or warrant the existence of conditions whose existence GEOTECHNOLOGY cannot ascertain. CLIENT agrees not to make resolution of any dispute with GEOTECHNOLOGY or payment of any amount due to GEOTECHNOLOGY in any way contingent upon GEOTECHNOLOGY signing any such document.
- d. The use of the word "certify" or "certification" by a registered professional engineer in the practice of professional engineering constitutes an expression of professional opinion regarding those facts or findings which are the subject of the certification, and does not constitute a warranty or guarantee, either express or implied. The definition and legal effect of any and all certifications shall be limited as stated herein.
- e. GEOTECHNOLOGY will strive to perform its construction materials testing services under this AGREEMENT in accordance with generally accepted testing procedures unless other procedures are specifically referenced in the text of the Project plans and/or specifications.
- f. GEOTECHNOLOGY will provide materials testing for samples specified by CLIENT or at a frequency specified by CLIENT and/or will collect samples for materials testing or conduct materials testing when contacted by the CLIENT. GEOTECHNOLOGY will provide foundation testing and/or television camera inspections on drilled shafts or piles constructed by and at a frequency specified by CLIENT. Engineering evaluation of the suitability of the number or types of samples is not provided by GEOTECHNOLOGY.
- g. Construction materials tests performed by GEOTECHNOLOGY on site are taken intermittently and indicate the general acceptability of materials on a statistical basis. GEOTECHNOLOGY'S tests and observation of materials are not a guarantee of the quality of other parties' work and do not relieve other parties from the responsibility to perform their work in accordance with applicable plans, specifications and requirements.

## **7 - JOBSITE**

- a. Unless specifically set forth in the PROPOSAL, GEOTECHNOLOGY will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences or procedures of construction or other field activities selected by any other person or entity, or safety precautions and programs incident thereto. GEOTECHNOLOGY shall be responsible only for its activities and that of its employees on any site. Neither the professional activities nor the presence of GEOTECHNOLOGY or its employees or its subcontractors on a site shall imply that GEOTECHNOLOGY controls the operations of others, nor shall this be construed to be acceptance by GEOTECHNOLOGY of any responsibility for jobsite safety.
- b. Unless indicated otherwise in the PROPOSAL, GEOTECHNOLOGY'S services under this AGREEMENT are limited to geotechnical engineering, geophysical surveying, drilling, construction materials testing or deep foundation testing and GEOTECHNOLOGY shall have no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with hazardous materials.
- c. CLIENT represents that CLIENT has made a reasonable effort to evaluate if hazardous materials are on or near the project site, and that CLIENT has informed GEOTECHNOLOGY of CLIENT's findings relative to the possible presence of such materials.
- d. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. GEOTECHNOLOGY and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. GEOTECHNOLOGY and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for GEOTECHNOLOGY to take immediate measures to protect health and safety. CLIENT agrees to compensate GEOTECHNOLOGY for measures taken to protect health and safety and/or any equipment decontamination or other costs incidental to the discovery of unanticipated hazardous materials.
- e. GEOTECHNOLOGY agrees to notify CLIENT when unanticipated hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold GEOTECHNOLOGY and its affiliated companies harmless for any and all consequences of disclosures made by GEOTECHNOLOGY, which are required by governing law. In the event the project site is not owned by CLIENT, CLIENT recognizes that it is CLIENT's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.
- f. CLIENT will be responsible for ultimate disposal of any samples secured by GEOTECHNOLOGY, which are found to be contaminated.

## **8 - BILLING AND PAYMENT**

- a. CLIENT will pay GEOTECHNOLOGY in accordance with the procedures indicated in the PROPOSAL and its attachments. Invoices will be submitted to CLIENT by GEOTECHNOLOGY, and will be due and payable thirty (30) days from the date of the invoice. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify GEOTECHNOLOGY in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in

dispute. The absence of written notification described above, shall constitute an unqualified acceptance of the invoice amount due and payable, and waiver by CLIENT of all claims with respect thereto.

- b. CLIENT recognizes that late payment of invoices results in extra expenses for GEOTECHNOLOGY. GEOTECHNOLOGY retains the right to assess CLIENT interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of GEOTECHNOLOGY'S invoices are not paid when due, GEOTECHNOLOGY reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this AGREEMENT until all past due amounts have been paid in full.
- c. If test results that indicate failure of a material to meet the intended specification require retesting of the material after additional work by parties responsible for that material, the cost of retesting will be invoiced to the CLIENT.
- d. GEOTECHNOLOGY may elect to adjust its rates under this AGREEMENT to account for changes in overhead rates and salary adjustments no sooner than one year from the date of this AGREEMENT, and no more often than once per year at the end of each subsequent year.

## 9 - TERMINATION

- a. This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if CLIENT suspends the work for more than three (3) months. Both parties shall have the opportunity to initiate a mutually agreeable remedy for failure of performance within fifteen (15) days after notice of termination. In the event of termination, GEOTECHNOLOGY will be paid for services performed prior to the date of termination plus reasonable termination expenses, including, but not limited to the cost of cleanup, demobilization, completing analyses, records, and reports necessary to document job status at the time of termination.

## 10 - ALLOCATION OF RISK

### 10.1 LIMITATION OF LIABILITY

- a. GEOTECHNOLOGY and CLIENT have evaluated the risks and rewards associated with this project, including GEOTECHNOLOGY'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of GEOTECHNOLOGY to CLIENT and third parties granted reliance is limited to the greater of \$50,000 or GEOTECHNOLOGY'S fee, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of GEOTECHNOLOGY'S services or this agreement regardless of cause or causes. Such causes include, but are not limited to, GEOTECHNOLOGY'S negligence, errors, omissions, strict liability, statutory liability, negligent misrepresentation, breach of contract, breach of warranty, or other acts giving rise to liability based on contract, tort or statute. If CLIENT prefers to have higher limits of liability coverage, GEOTECHNOLOGY agrees, upon receipt of CLIENT'S written request at the time of accepting our PROPOSAL, to increase the limits of liability up to a maximum of \$1,000,000.00 at an additional cost of 5 percent of our total fee or \$1,000.00, whichever is greater.
- b. Neither party shall have any liability to the other party for loss of product, loss of profit, loss of use, or any other indirect, incidental, special or consequential damages incurred by the other party.

### 10.2 INDEMNIFICATION

- a. Subject to the provisions of the Limitation of Liability described in 10.1a. above, CLIENT and GEOTECHNOLOGY each agree to indemnify and hold harmless the other party and the other party's affiliated companies, officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are legally determined to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this AGREEMENT. If claims, losses, damages, and judgments are legally determined to be caused by the joint or concurrent negligence of CLIENT and GEOTECHNOLOGY, they shall be borne by each party in proportion to its negligence.
- b. CLIENT shall indemnify and hold harmless GEOTECHNOLOGY, its affiliated companies, agents, subcontractors, directors, officers, and employees, from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including reasonable attorney's fees or other loss arising from damage to subterranean structures or utilities which were not identified or located by CLIENT to GEOTECHNOLOGY in advance of our work or the discovery of unanticipated hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of the project and any costs associated with possible reduction of the property's value.
- c. For the purposes of this AGREEMENT only, and except as provided under Paragraph 10.2 (a) above regarding the negligent performance of GEOTECHNOLOGY, CLIENT shall reimburse GEOTECHNOLOGY for or otherwise indemnify, defend, and save GEOTECHNOLOGY, its affiliated companies, agents, subcontractors, directors, officers and employees harmless from any and all demands, suits, judgment, expenses, attorney's fees, and losses arising out of or in connection with bodily injury (including death) to persons or damage to property which may arise from the presence or origination of hazardous substances, pollutants, or contaminants on CLIENT'S property, irrespective of whether such materials were generated or introduced before or after execution of this AGREEMENT; provided, however, that nothing hereinabove set forth is intended to shift any responsibility for employee claims that the parties may bear under the Worker's Compensation laws of the state in which the work is to be performed.
- d. GEOTECHNOLOGY shall under no circumstances be considered the generator of any hazardous substances, pollutants, or contaminants encountered or handled in the performance of the work. Without contradiction of any assertion by CLIENT or third-party liability as described in Paragraph 10.2 (b) above and for the purposes of this AGREEMENT only, it is agreed that any hazardous materials, pollutants, or contaminants generated or encountered in the performance of the work shall be the responsibility of CLIENT.

## **11 - CONTINUING AGREEMENT**

- a. The indemnity obligations and limitations of liabilities established throughout this AGREEMENT, regardless of paragraph number, shall survive the assignment, transfer, expiration or termination of this AGREEMENT.

## **12 -PREVAILING WAGE AND UNION MEMBERSHIP**

- a. Unless CLIENT specifically informs GEOTECHNOLOGY in writing or it is specifically identified in our PROPOSAL and/or WORK AUTHORIZATION that prevailing wage regulations or union membership are required for the Project and the Scope of Services identifies it as covered, CLIENT will reimburse, defend, indemnify and hold harmless GEOTECHNOLOGY and its affiliated companies from and against any liability resulting from a subsequent determination that prevailing wage regulations or union membership cover the Project, including all additional costs, fines and attorneys' fees.

## **13 -THIRD PARTY RELIANCE UPON REPORTS**

- a. All Documents are prepared solely for use by CLIENT (and Owner, if applicable) and shall not be provided to any other person or entity without GEOTECHNOLOGY'S written consent. CLIENT shall defend, indemnify and hold harmless GEOTECHNOLOGY, its affiliated companies, officers, shareholders and employees, from and against any action or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without GEOTECHNOLOGY'S written consent.

## **14 -NON-SOLICITATION OF EMPLOYEES**

- a. CLIENT recognizes that GEOTECHNOLOGY, as a part of the services covered by this AGREEMENT, may provide one or more of its employees to work with members of CLIENT'S project staff or specifically on a CLIENT'S project. For purposes of this AGREEMENT, an employee of GEOTECHNOLOGY may be a permanent or temporary employee assigned to provide services to CLIENT. CLIENT hereby agrees that CLIENT will not hire, either directly or indirectly, or provide inducement to hire an employee of GEOTECHNOLOGY either as an employee of CLIENT or as an employee of a subcontractor or supplier to CLIENT, such suppliers to include providers of contract labor, during the term of this AGREEMENT and for a period of six months after the termination of this AGREEMENT. Any hiring or inducement to hire any GEOTECHNOLOGY employee during the term of this AGREEMENT and for a period of six months after termination of this AGREEMENT will be subject to a fee equal to 25% of the total fee for services generated by that employee during a nominal 12-month period.

## **15 -DISPUTES RESOLUTION**

- a. All claims, disputes, and other matters in controversy between GEOTECHNOLOGY and CLIENT arising out of or in any way related to this AGREEMENT will be submitted to mediation as a condition precedent to litigation. Notwithstanding any other provision of the Agreement, unless prohibited by law, GEOTECHNOLOGY shall have, in addition to any other right or option set forth herein, the right to proceed in creating a lien upon the building or other improvements and upon the real estate on which the building or improvements are situated for the work and labor done and the labor and materials furnished on and to said real estate and to enforce its mechanic's lien pursuant to all rights and remedies available to it under law.
- b. If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation, then:
  - (1) the claim will be brought and tried in St. Louis County, Missouri and CLIENT waives the right to move the action to any other county or judicial jurisdiction, and
  - (2) the prevailing party in any arbitration or litigation between GEOTECHNOLOGY and CLIENT shall be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, expert witness costs, and other claim related expenses. For purposes of this paragraph, a party prevails if (i) the judgment is equal to or in excess of the Plaintiff's last written demand for settlement, the Plaintiff shall also be entitled to recover its costs, expenses and reasonable attorney's fees from Defendant; (ii) the judgment is equal to or less than the Defendant's last written offer of settlement, the Defendant shall be entitled to recover its costs, expenses and reasonable attorney's fees from the Plaintiff; (iii) the judgment is in between the Plaintiff's last written demand for settlement and the Defendant's last offer of settlement, then neither party shall recover any of its costs, expenses or attorney's fees from the other.

## **16 -GOVERNING LAW AND SURVIVAL**

- a. The law of the State of Missouri will govern the validity of these TERMS, their interpretation and performance.
- b. If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

## **17 -SUCCESSORS AND ASSIGNS**

- a. This AGREEMENT shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign its interests herein (unless assignee assumes in writing assignor's obligations hereunder) without the prior written consent of the other party, which consent will not be unreasonably withheld. No assignment shall operate to relieve the assignor of its obligations under the AGREEMENT.

## **18 -OTHER PROVISIONS**

- a. It is agreed that this AGREEMENT is entered into by the parties for the sole benefit of the parties to the AGREEMENT, and that nothing in the AGREEMENT shall be construed to create a right or benefit for any third party.
- b. Neither party shall hold the other responsible for damages or delay in performance caused by weather and other acts of God, strikes, lockouts, accidents, or other events beyond the reasonable control of the other or the other's employees and agents.
- c. The titles used in this AGREEMENT are for general reference only and are not part of the AGREEMENT.

**19 - FUTURE SERVICES**

- a. All future services rendered by GEOTECHNOLOGY at CLIENT'S request for the project described in the PROPOSAL and/or WORK AUTHORIZATION shall be conducted under the terms of this AGREEMENT.

**20 - SIGNATURES**

- a. The parties have read the foregoing, including any attachments thereto, understand completely the terms, and willingly enter into this AGREEMENT that will become effective on the date signed below by CLIENT.

**City of Nevada, Missouri**

**Geotechnology, LLC**

 \_\_\_\_\_ (Signature)

 \_\_\_\_\_ (Signature)

By: LARRY STEVENS (Print Name)

By: Matt McQuality, P.E. (Print Name)

Position: CITY MANAGER

Position: Office Lead

Date: 8/7/24

Date: 7/25/2024