

Meeting Date
January 27, 2015



AGENDA	
Section	CONSENT
Item No.	II.A.3

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Authorization to Issue Notice to Proceed for Professional Services for the St. Johns Heritage Parkway – District 5
DEPT/OFFICE:	Public Works Department – Finance and Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners authorize the Public Works Department to issue a Notice to Proceed to Professional Service Industries, Inc. for materials testing and inspection services for the southern segment of the St. Johns Heritage Parkway Project estimated at \$264,754.02.

Summary Explanation & Background:

In accordance with Board direction, staff has completed the coordination of engineering design, permitting, and right-of-way acquisition for the southern segment of the St. Johns Heritage Parkway Project (the portion between the City of Palm Bay City Limits and US192). As the project progresses into the construction phase, it is necessary to conduct materials testing of the roadway and bridge materials. This service will be completed utilizing the services of Professional Service Industries, Inc. per the existing Professional Services Agreement with Brevard County approved by the Board on January 25, 2012 and executed on September 27, 2012. The acquisition of consultant professional services was obtained in conformance with Board Policy BCC-26.

Approval of the proposal will provide authorization for staff to issue a Notice to Proceed to Professional Service Industries, Inc. for materials testing and inspection services during the construction phase in the amount up to \$264,754.02 and is based on estimated quantities and corresponding individual unit prices conforming to the services contract. The \$264,754.02 Professional Service Industries, Inc. has proposed to provide the geotechnical testing services is less than the project budgeted amount for this purpose. It is also less than 2.2% of the project construction bid amount of \$12,288,941.09. 2.2% is significantly lower than that customarily paid for these services based on general standards recognized within the construction industry.

The roadway contractor has been awarded the construction contract and is anticipated to commence work in February 2015. Authorization to issue a Notice To Proceed for materials testing and inspection services is necessary for the construction phase of the southern segment of the St. Johns Heritage Parkway.

Fiscal Impact: FY 2014/2015/2016

Estimated at \$264,754.02 / Funding is available in Business Area 1163 Cost Center 265160.

Clerk to the Board Instructions:

Exhibits Attached: Proposal for Providing QA Testing and Inspection

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager, Mel Scott	Department Director / Extension John P. Denninghoff / 57202
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Stockton Whitten	Assistant County Manager, Venetta Valdengo	
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

January 28, 2015

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item II.A.3., Authorization to Issue Notice to Proceed for Professional Service Industries, Inc. for St. Johns Heritage Parkway

The Board of County Commissioners, in regular session on January 27, 2015, granted permission to issue a Notice to Proceed to Professional Service Industries, Inc. for materials testing and inspection services for the southern segment of the St. Johns Heritage Parkway Project, estimated at \$264,754.02.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/kg

cc: Finance
Budget

December 29, 2014

Richard B. Szpyrka, P.E.
Engineer III
Brevard County Public Works
Phone: 321-637-5437
Richard.Szpyrka@brevardcounty.us

Re: Proposal for Providing QA Testing and Inspection
St. Johns Heritage Parkway
Brevard County, Florida
Fin: 428346-3-58-01
PSI Proposal No. 0696-140976

Dear Mr. Szpyrka:

Professional Service Industries, Inc. (PSI) appreciates the opportunity to submit this proposal for providing QA materials testing & inspection services for the above referenced project. Herein, we provide a general discussion of services that we understand will be required for this project, present our estimated costs for such services, and include our General Conditions. Should you have any questions or request any additional information, please do not hesitate to call at 407-304-5560.

QUALIFICATIONS:

PSI is a nationally recognized consulting engineering and testing firm providing integrated services in several disciplines, including geotechnical engineering, construction services, materials engineering & testing, roof & pavement consulting, asbestos management, and facilities consulting and engineering. **PSI's Central Florida offices, located in Orlando, Kissimmee and Cocoa, include more than 50 engineers, inspectors, and support staff available to assist our clients.**

Our inspectors are ACI, NICET, SBCCI and CTQP trained/certified in their respective disciplines, as required by building codes and industry standards. Our engineering staff includes registered professional engineers with significant construction experience. We are the leading engineering company in Central Florida when it comes to CQC Management, Testing and Inspection Services. Our laboratory is AASHTO, CCRL, CMEC and Army Corp of Engineers certified and inspected & approved by the FDOT. We are aware that some firms may self-perform some of the CQC inspection and/or testing, therefore we have attached our estimated scope of services in outline form so that they can be added and/or deleted at your request.

PSI has earned a reputation for delivering quality service at reasonable costs by successfully completing thousands of projects for a variety of industries and organizations. We recognize that construction projects are built in the "real world" and that proposed schedules do not always work out. Therefore, we appreciate the importance of being able to respond to requests for our services on short notice and multi-shift work, including night time work and weekend work. Based on our understanding of the project requirements, we anticipate that the following testing services will be required during the completion of this project:

Structural Concrete Sampling and Testing

- Sample and test concrete and mold compressive strength cylinders for structural concrete as outlined in Section 346 of the FDOT's Standard Specifications.
- Any extra sampling of concrete such as early-break cylinders and/or beams for flexural strength will be considered not part of our scope of work and will be performed as requested for a fee according to our unit fees submitted within this proposal.
- Perform laboratory compressive strength tests on cured concrete cylinders.
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Earthworks Testing and Inspections

- Monitor backfilling operation and inspect achievement of soil compaction of each lift of embankment construction as per Section 120 of the FDOT's Standard Specifications.
- Monitor backfilling operation and inspect achievement of soil compaction of each lift of structures and pipe construction as per Section 125 of the FDOT's Standard Specifications.
- Monitor backfilling operation and inspect achievement of soil compaction of each lift of stabilized Subgrade as per Section 160 of the FDOT's Standard Specifications.
- Monitor backfilling operation and inspect achievement of soil compaction of each lift of Base construction as per Section 200 of the FDOT's Standard Specifications.
- Sampling and testing of soil material per the following tests: standard proctor, modified proctor, LBR test, sieve analysis, organic content, corrosion series, carbonate content, and Atterberg Limits.
- Record the density test results and laboratory results into the Density Log Books and LIMS/Construction Hive respectively.

Paving Testing and Inspections

- Monitor Milling/Paving operation and inspect achievement of compaction of each lift of asphalt construction as per Section 300/327/334 of the FDOT's Standard Specifications.
- Monitor Asphalt Plant operations and inspect plant operations per Section 300/327/334 of the FDOT's Standard Specifications.
- Record the field and laboratory test results into the appropriate LIMS and/or approved FDOT tracking spreadsheet respectively.
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Structures and Structures Foundations Inspections

- Monitor and log pile driving operations and inspect achievement of driving criteria supplied by others per Section 455 of the FDOT's Standard Specifications.
- Monitor and inspect bridge construction per Section 346/400 of FDOT's Standard Specifications.

QA Management

- Project visits to verify that the contractor's QC plan is being followed by the contractor to minimize possible delays for non-compliance with the existing QC plan.
- Input and Review of LIMS and/or the appropriate sample tracking system to verify that all samples stay current as per specifications.
- Attend project progress meetings when needed or requested by Owner.
- Report the results of our field and laboratory tests to other members of the construction team, as requested.
- Meet with field inspectors on a regular basis to go over project activities and QA testing progress.
- Managing and scheduling field inspectors to properly support construction activities.

General Notes

Reports of all tests results will be either entered into LIMS/Construction Hive as requested or recorded on the Density Log Books. Please note that our services do not include supervision or direction of the actual work. Also, be aware that neither the presence of our field representative, nor the observation and testing by our firm shall imply PSI's responsibility for defects discovered in the construction work. It is understood that our firm will not be responsible for job or site safety on this project. Job site safety will be the sole responsibility of the contractor, but we will definitely notify appropriate parties if something is noticed to be unsafe

ESTIMATED COST

We propose to perform our QA services for a lump sum fee of **\$264,754.02**. We will provide you with a monthly invoice based on the percentage of completion for the project or based on a schedule of values, as you request. If reduced frequency is utilized and barring no scheduling or contract failures needing retests, PSI may extend a Cost Savings Initiative (CSI) to Brevard County for the reduction in testing. This reduction in testing is completely based on the contractor's ability to achieve and maintain reduced frequency per the applicable FDOT Specifications. The reduced QA services total is estimated to be **\$235,109.02**. Please keep in mind that our cost is based on the assumptions presented herein.

Assumptions

- We are basing our price on a project duration of 789 total calendar days (26 months) as estimated on the preliminary schedule (February 2015 to April 2017).
- We are assuming that we can cover the QA activities as follows:
 - One full-time CTQP Earthwork/Concrete Level I/Level II Inspector, working up to 40 hours per week for a period of 26 months.
 - One part-time CTQP Earthwork/Concrete Level I/Level II Technician, working up to 40 hours per week for a period of 15 months.
- We assume that the work schedule is Monday through Friday from 7 AM to 6 PM and occasional night and weekend work. PSI anticipates managing its full and part-time technicians to work up to 40 hours per week and our quote is based on this.
- We are assuming that the Density Log Book will be developed by the QA Manager with and the EDR sheets do not need to be entered on an electronic format.
- We are assuming that the inspection and testing for the foundations for signing, marking, lighting systems, precast products, post tensioning are to be performed by others. PSI can provide these services if required.
- We are assuming that if steel testing and inspections are needed, they will be performed by others, but will be happy to provide a quote for these services if requested.
- We are assuming that work will not be performed on the following holidays: Memorial Day, Labor Day, 4th of July, Thanksgiving Day, Christmas Eve, Christmas Day and New Year's Day.
- No base lab testing based on FDOT DCE Memo 17-14.
- Quantities based on current MOT plan configurations from plans dated 9/2/2014.
- We are assuming that all stabilizing laboratory tests will be based on utilization of limerock as local stabilizing additive.
- This proposal does not include fiber optic conduit installation testing.
- We are assuming the use of precast concrete components for drainage structures' construction.
- No drilled shaft testing/inspection included with this quote.
- If reduced frequency is achieved a significant testing/inspection savings may be achieved.
- Estimating 80LF of Storm Sewer Pipe will be installed in one day's production for generating testing quantities.

LABORATORY TESTING SERVICES

Section 120 – Excavation & Embankment

<u>Maximum Density Determination (one per soil type) (AASHTO T-99)</u> Estimate 15 tests @ \$84.00/test	\$ 1,260.00
<u>Grain Size Determination (Sieve Analysis)</u> Estimate 15 tests @ 73.00/test	\$ 1,095.00
<u>LL PI & Organics (\$97 + \$32)</u> Estimate 15 tests @ \$129.00/test	\$ 1,935.00

Section 160 – Stabilized Subgrade

<u>Limerock Bearing Ratio Tests (1 per 2 lots; lot = 500LF)</u> Estimate 25 tests @ \$263.00/test	\$ 6,575.00
<u>Liquid Limit (LL) / Plastic Index (PI)</u> Estimate 25 tests @ \$97.00/test	\$ 2,425.00

Section 200 – Rock Base (FDOT approved pit, no testing required per DCE Memo 17-14, use pit proctor data)

Section 346 – Cast-In-Place Concrete (Structural Concrete Only)

<u>Compressive Strength of Concrete (1 set per day's placement)</u> <u>(1 set per each 50 CY) – Initial and Acceptance Testing each Lot</u> Estimate 45 sets @ \$81.00/set	\$ 3,645.00
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Section 548 – MSE Walls

<u>Maximum Density Determination (one per soil type) (AASHTO T-180)</u> Estimate 8 tests @ \$84.00/test	\$ 672.00
<u>Corrosion Series (pH, R, Cl, S)</u> Estimate 8 tests @ \$160.00/test	\$ 1,280.00
<u>Grain Size Determination (Sieve Analysis)</u> Estimate 8 tests @ \$73.00/test	<u>\$ 584.00</u>

Total QA Lab Testing \$ 19,471.00

FIELD TESTING SERVICES

Section 120/125 – Excavation & Embankment (Includes storm systems & roadway/sidewalk fills)

Drainage Density Testing (one test per lot: lot = 500 LF (150m) per lift)

(Estimate 80 LF of pipe per day)

1 test between structures (60 structures, 12,924 LF of pipe)

CTQP Qualified Earthwork Technician Level I

Estimate 1,292 hours @ \$55.00/hour \$ 71,060.00

If Reduced Frequency Drainage Testing achieved per FDOT Section 125 above:

CTQP Qualified Earthwork Technician Level I

Estimate 840 hours @ \$55.00/hour \$ 46,200.00

Embankment Density Testing (one test per lot: lot = 55 LF (150m) per lift)

CTQP Qualified Earthwork Technician Level I

Estimate 249 hours @ \$55.00/hour \$ 13,695.00

If Reduced Frequency Testing achieved per FDOT Section 120 above:

CTQP Qualified Earthwork Technician Level I

Estimate 162 hours @ \$55.00/hour \$ 8,910.00

Section 160 – Stabilizing

Density Testing (one test per lot: lot = 500 LF (150m))

Thickness Testing – 3 per lot, CTQP Qualified Earthwork Technician Level I

Estimate 200 hours @ \$55.00/hour \$ 11,000.00

Section 200 – Rock Base

Density Testing (3 per each lot: lot = 500 LF (150m))

Thickness Checks – Mainline Roadway = 3 per 500 LF,

Shoulders = 3 per 1,000 LF, CTQP Qualified Earthwork Technician Level I

Estimate 140 hours @ \$55.00/hour \$ 7,700.00

Section 346 – Cast-In-Place Concrete

Concrete Testing & Inspection

CTQP Qualified Concrete Technician Level I - Testing

Estimate 270 hours testing @ \$55.00/hour \$ 14,850.00

CTQP Qualified Concrete Technician Level II - Bridge Inspection

Estimate 450 hours @ \$75.00/hour \$ 33,750.00

FIELD TESTING SERVICES Continued

Section 334 – Superpave Asphalt (Estimate 36 days of paving, 8 hours/day)

Asphalt Roadway Inspection/Testing (16,288 tons)

CTQP Qualified Asphalt Roadway Technician Level II

Estimate 288 hours @ \$63.00/hour \$ 18,144.00

Asphalt Laboratory Inspection/Testing (Estimate 36 days of paving, 8 hours/day)

CTQP Qualified Asphalt Lab Technician Level II

Estimate 288 hours @ \$63.00/hour \$ 18,144.00

Section 455 – Structure Foundations

CTQP Pile Driving Inspection

(10 piles, estimate 2 piles installed per day of driving)

(To log installation per given driving criteria)

Estimate 50 hours @ \$75.00/hour \$ 3,750.00

Section 548 – MSE Walls

Density Testing (one set of test per lot/per section of wall)

CTQP Qualified Earthwork Technician Level I

Estimate 498 hours @ \$55.00/hour \$ 27,390.00

Total QA Field Testing/Inspection \$ 219,483.00

With Reduced Frequency Total QA Field Testing/Inspection \$ 189,838.00

ADMINISTRATIVE SERVICES

Density Log Book(s)

Estimate 1 book @ \$1,000.02/book \$ 1,000.02

The logbook estimate includes:

15 hours of CADD technician rate \$65/hour

417pages of printing at \$0.06/page

Senior Project Manager (report review/management/engineering)

Estimate 130 hours @ \$160.00/hour \$ 20,800.00

Word Processing Services

(Report generation and disbursement)

Estimate 80 hours @ \$50.00/hour \$ 4,000.00

Total Administrative Services \$ 25,800.02

Inspection/Testing Estimate Total \$ 264,754.02

With Reduced Frequency Inspection/Testing Estimate Total \$ 235,109.02

ADDITIONAL SERVICES (if requested)

Section 450 – Precast/Prestress Plant Inspections (Beams/Piles)

Inspect QC operations and verify concrete placements
Estimate 6 days (60 hours) of fabrications @ \$75.00/hour \$ 4,500.00

Section 455 – Structure Foundations

PDA Services

Estimate 2 days @ \$2,500.00/day (summary below) \$ 5,000.00

PDA Estimate daily rate would include:

10 hours of Staff Engineer @ \$104/hour

10 hours of Professional Engineer @ \$136/hour

2 hours of Secretarial/Administrative @ \$50/hour

Foundation Certification

Estimate 2 @ \$1,500.00/each (summary below) \$ 3,000.00

Foundation Certification rate per each would include

3 hours of Staff Engineer @ \$104/hour

8 hours of Professional Engineer @ \$136/hour

2 hours of Secretarial/Administrative @ \$50/hour

Total Additional Services \$ 12,500.00

Inspection/Testing Subtotal with Additional Services \$ 277,254.02

With Reduced Frequency Inspection/Testing Subtotal and Additional Services \$ 247,609.02

AUTHORIZATION:

If this proposal is acceptable, please sign in the space provided below to formalize the agreement. We note that the attached General Conditions are a part of this proposal. We appreciate the opportunity of submitting this proposal and look forward to working with you on this project. Please contact us if any questions arise or if we may be of any service in any way.

Sincerely,



Charles Woerner
Dept. Manager - Transportation



Stephanie Weidner Landis
Business Development Mgr.

GENERAL CONDITIONS

1. **PARTIES AND SCOPE OF WORK:** Professional Service Industries Inc. (hereinafter referred to as "PSI") shall include said company or its particular division, subsidiary or affiliate performing the work. "Work" means the specific geotechnical, analytical, testing or other service to be performed by PSI as set forth in PSI's proposal. Client's acceptance thereof and these General Conditions. Additional work ordered by Client shall also be subject to these General Conditions. "Client" refers to the person or business entity ordering the work to be done by PSI. If Client is ordering the work on behalf of another, Client represents and warrants that it is the duly authorized agent of said party for the purpose of ordering and directing said work. Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by the client is adequate and sufficient for Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom Client transmits any part of PSI's work, PSI shall have no duty or obligation to any third party greater than that set forth in PSI's proposal, Client's acceptance thereof and these General Conditions. The ordering of work from PSI, or the reliance on any of PSI's work, shall constitute acceptance of the terms of PSI's proposal and these General Conditions, regardless of the terms of any subsequently issued document.

2. **TESTS AND INSPECTIONS:** Client shall cause all tests and inspections of the site, materials and work performed by PSI or others to be timely and properly performed in accordance with the plans, specifications and contract documents and PSI's recommendations. No claims for loss, damage or injury shall be brought against PSI by Client or any third party unless all tests and inspections have been so performed and unless PSI's recommendations have been followed. Client agrees to indemnify, defend and hold PSI, its officers, employees and agents harmless from any and all claims, suits, losses, costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in the event that all such tests and inspections are not so performed or PSI's recommendations are not so followed except to the extent that such failure is the result of the negligence, willful or wanton act or omission of PSI, its officers, agents or employees, subject to the limitation contained in paragraph 9.

3. **SCHEDULING OF WORK:** The services set forth in PSI's proposal and Client's acceptance will be accomplished in a timely, workmanlike and professional manner by PSI personnel at the prices quoted. If PSI is required to delay commencement of the work or if, upon embarking upon its work, PSI is required to stop or interrupt the progress of its work as a result of changes in the scope of the work requested by Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of PSI, additional charges will be applicable and payable by Client.

4. **ACCESS TO SITE:** Client will arrange and provide such access to the site as is necessary for PSI to perform the work. PSI shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its work or the use of its equipment; however, PSI has not included in its fee the cost of restoration of damage which may occur. If Client desires or requires PSI to restore the site to its former condition, upon written request PSI will perform such additional work as is necessary to do so and Client agrees to pay to PSI for the cost.

5. **CLIENT'S DUTY TO NOTIFY ENGINEER:** Client represents and warrants that it has advised PSI of any known or suspected hazardous materials, utility lines and pollutants at any site at which PSI is to do work hereunder, and unless PSI has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save PSI harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to PSI's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof were not revealed to PSI by Client.

6. **RESPONSIBILITY:** PSI's work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. PSI shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. PSI's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. PSI has no right or duty to stop the contractor's work.

7. **SAMPLE DISPOSAL:** Unless otherwise agreed in writing, test specimens or samples will be disposed immediately upon completion of the test. All drilling samples or specimens will be disposed sixty (60) days after submission of PSI's report.

8. **PAYMENT:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay PSI's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees. PSI shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, any provision wherein PSI waives any rights to a mechanics' lien, or any provision conditioning PSI's right to receive payment for its work upon payment to Client by any third party. These General Conditions are notice, where required, that PSI shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of PSI from any and all claims which Client may have, whether in tort, contract or otherwise, and whether known or unknown at the time.

9. **WARRANTY:** PSI'S SERVICES WILL BE PERFORMED, ITS FINDINGS OBTAINED AND ITS REPORTS PREPARED IN ACCORDANCE WITH ITS PROPOSAL, CLIENT'S ACCEPTANCE THEREOF, THESE GENERAL CONDITIONS, AND WITH GENERALLY ACCEPTED PRINCIPLES AND PRACTICES. IN PERFORMING ITS PROFESSIONAL SERVICES, PSI WILL USE THAT DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY MEMBERS OF ITS PROFESSION. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED. STATEMENTS MADE IN PSI REPORTS ARE OPINIONS BASED UPON ENGINEERING JUDGMENT AND ARE NOT TO BE CONSTRUED AS REPRESENTATIONS OF FACT.

SHOULD PSI OR ANY OF ITS PROFESSIONAL EMPLOYEES BE FOUND TO HAVE BEEN NEGLIGENT IN THE PERFORMANCE OF ITS WORK, OR TO HAVE MADE AND BREACHED ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR CONTRACT, CLIENT, ALL PARTIES CLAIMING THROUGH CLIENT AND ALL PARTIES CLAIMING TO HAVE IN ANY WAY RELIED UPON PSI'S WORK AGREE THAT THE MAXIMUM AGGREGATE AMOUNT OF THE LIABILITY OF PSI, ITS OFFICERS, EMPLOYEES AND AGENTS SHALL BE LIMITED TO \$25,000.00 OR THE TOTAL AMOUNT OF THE FEE PAID TO PSI FOR ITS WORK PERFORMED WITH RESPECT TO THE PROJECT, WHICHEVER AMOUNT IS GREATER.

IN THE EVENT CLIENT IS UNWILLING OR UNABLE TO LIMIT PSI'S LIABILITY IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THIS PARAGRAPH, CLIENT MAY, UPON WRITTEN REQUEST OF CLIENT RECEIVED WITHIN FIVE DAYS OF CLIENT'S ACCEPTANCE HEREOF, INCREASE THE LIMIT OF PSI'S LIABILITY TO \$250,000.00 OR THE AMOUNT OF PSI'S FEE, WHICHEVER IS THE GREATER, BY AGREEING TO PAY PSI A SUM EQUIVALENT TO AN ADDITIONAL AMOUNT OF 5% OF THE TOTAL FEE TO BE CHARGED FOR PSI'S SERVICES. THIS CHARGE IS NOT TO BE CONSTRUED AS BEING A CHARGE FOR INSURANCE OF ANY TYPE, BUT IS INCREASED CONSIDERATION FOR THE GREATER LIABILITY INVOLVED. IN ANY EVENT, ATTORNEY'S FEES EXPENDED BY PSI IN CONNECTION WITH ANY CLAIM SHALL REDUCE THE AMOUNT AVAILABLE, AND ONLY ONE SUCH AMOUNT WILL APPLY TO ANY PROJECT.

NO ACTION OR CLAIM, WHETHER IN TORT, CONTRACT, OR OTHERWISE, MAY BE BROUGHT AGAINST PSI, ARISING FROM OR RELATED TO PSI'S WORK, MORE THAN TWO YEARS AFTER THE CESSATION OF PSI'S WORK HEREUNDER, REGARDLESS OF THE DATE OF DISCOVERY OF SUCH CLAIM.

10. **INDEMNITY:** Subject to the foregoing limitations, PSI agrees to indemnify and hold Client harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs arising out of PSI's negligence to the extent of PSI's negligence. Client shall provide the same protection to the extent of its negligence. In the event that Client or Client's principal shall bring any suit, cause of action, claim or counterclaim against PSI, the party initiating such action shall pay to PSI the costs and expenses incurred by PSI to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that PSI shall prevail in such suit.

11. **TERMINATION:** This Agreement may be terminated by either party upon seven days' prior written notice. In the event of termination, PSI shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses, and for the completion of such services and records as are necessary to place PSI's files in order and/or protect its professional reputation.

12. **EMPLOYEES/WITNESS FEES:** PSI's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay PSI's legal expenses, administrative costs and fees pursuant to PSI's then current fee schedule for PSI to respond to any subpoena. Client agrees not to hire PSI's employees except through PSI. In the event Client hires a PSI employee within one year following any project through which client had contact with said employee, Client shall pay PSI an amount equal to one-half of the employee's annualized salary as liquidated damages, without PSI waiving other remedies it may have.

13. **HAZARDOUS MATERIALS:** Nothing contained within this agreement shall be construed or interpreted as requiring PSI to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client assumes full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.

14. **PROVISIONS SEVERABLE:** The parties have entered into this agreement in good faith, and it is the specific intent of the parties that the terms of these General Conditions be enforced as written. In the event any of the provisions of these General Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.

15. **ENTIRE AGREEMENT:** This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.