



TETRA TECH

October 29, 2020

Martha's Vineyard Commission
C/O Alex Elvin, General Planner
The Olde Stone Building
Oak Bluffs, MA 02557

**Re: Synthetic Turf Laboratory Testing and Analysis
Martha's Vineyard Regional High School Athletic Fields Project (DRI 352-M4)**

Dear Mr. Elvin:

Tetra Tech, Inc. is pleased to submit this Proposal to the Martha's Vineyard Commission (CLIENT) for testing and risk characterization of building materials related to proposed synthetic turf for the referenced project at the Martha's Vineyard Regional High School (the project). This Proposal was prepared in response to a Scope of Work dated October 14, 2020 that was provided to Tetra Tech by the CLIENT.

Scope of Services

Specific tasks proposed for this project are outlined below.

Task 1 Identify/Develop Testing Protocols and Guideline Values. Tetra Tech will perform a literature search, review synthetic turf manufacturer association documentation, and reference other available internal and external sources to evaluate applicable testing protocols for the laboratory analysis of samples of building materials related to synthetic turf for the project. As detailed in the provided Scope of Work, the target hazardous materials to be evaluated are total and leachable metals (MCP 14 metals and hexavalent chromium); total and leachable polycyclic aromatic hydrocarbons (PAHs); and total and leachable per- and poly-fluorinated alkyl substances (PFAS). Based on our review, we will select and/or develop a sampling and analysis protocol in coordination with our selected laboratory, Alpha Analytical Laboratories of Westborough, Massachusetts (Alpha).

In addition, we will review available literature, regulations, guidance and discuss within industry experts to assess available guideline values and other considerations regarding hazardous materials within synthetic turf components. The United States Environmental Protection Agency (EPA), the Agency for Toxic Substances and Disease Registry (ATSDR), the Massachusetts Department of Environmental Protection (MassDEP), and various regulators have developed risk-based guidance and standards for several hazardous materials in soil and groundwater, but limited guidance is available for building materials. We further note that the science on PFAS is rapidly evolving and limited information from government authorities for reference doses or similar risk characterization parameters is currently available. Therefore, we will also rely upon industry experts to supplement these primary reference sources.

The results of this research including the sampling protocol, recommended analysis, proposed risk characterization approach and other considerations regarding the design of a synthetic turf field will be presented to the CLIENT for approval prior to proceeding with Task 2A. If the recommended analysis varies from the assumed analysis in Task 2A or the risk characterization approach varies from the approach that is defined in Task 3, a budget modification may apply.

Task 2A Sampling and Laboratory Analysis of Synthetic Turf Components. Tetra Tech will coordinate the laboratory analysis of the following synthetic turf component as provided by the CLIENT:

- Greenfields USA Iron Turf Ultra Green woven synthetic turf carpet;
- BrockUSA Brockfill wood infill;
- BrockUSA YSR shockpad; and
- Adhesives for the turf carpet.

The samples will be transferred to Alpha for analysis via a chain of custody. The laboratory will prepare the samples and analyze for the following constituents (assumed and budgeted at this time):

- Total MCP 14 metals and hexavalent chromium using EPA Methods 6010D, 7471B, and 7196A;
- Leachable¹ MCP 14 metals using EPA Methods 1311, 6010D, & 7471B;
- Total semi-volatile volatile organic compounds (SVOCs) including PAHs using EPA Method 8270D-SIM. Due to the potential for additional semi-volatile organic compounds in these building materials we recommend analysis for the full list of acid-base neutral compounds via EPA Method 8270D-SIM;
- Leachable¹ PAHs using EPA Methods 1311 and 8270D-SIM;
- Total PFAS (24 compounds) by solid phase extraction/isotope dilution method (SPE-ID), where possible, dependent on whether the sample can be dissolved by the extraction process; and
- Leachable¹ PFAS (24 compounds) by EPA Methods 1312 and PFAS by isotope dilution.

Task 2B Additional Laboratory Analysis. Following receipt of the results of the initial tests in Task 2A, the CLIENT may request additional PFAS analysis including Total Oxidizable Precursor (TOP) Assay and Total Organofluorine (TOF) analysis of the samples. We have included unit costs per sample for this analysis at the laboratory. However, we note that both the TOP Assay and TOF analysis are typically performed on aqueous samples, and there are no standard laboratory methods (typically proprietary laboratory methods are employed). Alpha can assist with this analysis; however, the analysis of solid materials for TOP and TOF may not yield usable data including data that may be used in the quantitation of human health risk at the Site, based on the currently available information. These considerations will likely limit the usefulness of these analyses and increase the uncertainty in the reported results. Following Task 2A, these additional analyses will be discussed with the Client.

Task 3 Risk Characterization. Tetra Tech will review the laboratory analytical data and compare the results to risk-based guideline values that were identified in Task 1, as applicable. The risk characterization will focus on exposures to humans who may be exposed to the synthetic turf during normal and intended use (e.g. adult maintenance workers and adult/child recreational users) as well as potential for human exposure to drinking water in the vicinity. The risk characterization will not address potential exposures to other environmental receptors due to significant limitations on currently available information in this area. The results of the risk characterization will be presented in the summary report (Task 4).

¹ The toxicity characteristic leaching procedure (TCLP) analytical method will be used to assess leachability. The TCLP method was developed to mimic leaching which is expected to occur in a landfill environment which are conditions that are likely more “severe” than leaching by exposure to precipitation. Using the TCLP method will likely result in “worst-case” results which could overstated the potential leaching of contaminants from the samples.

Task 4 Summary Report. Tetra Tech will prepare a report that summarizes and describes the work completed. The report will include a summary of the analytical data, the risk characterization, and recommendations for next steps.

Budget

The fee for the work outlined in this proposal will be billed on a time and materials basis. We suggest that you establish a budget of \$19,500, which will not be exceeded without your prior written approval. Fees in excess of this amount will be billed as an additional cost. Additional services, including draft reports, revisions, development of subsequent scopes of work, and follow-up consultations after submittal of the report, will be billed according to the then current Fee Schedule.

The breakdown of project fees by task is as follows:

Task Description	Labor	Lab	Task Total
Task 1 Identify/Develop Testing Protocols and Guideline Values	\$5,500	\$0	\$5,500
Task 2A Sampling and Laboratory Analysis of Synthetic Turf Components	\$1,200	\$5,900	\$7,100
Task 3 Risk Characterization	\$3,300	\$0	\$3,300
Task 4 Summary Report	\$3,600	\$0	\$3,600
Subtotal Estimated Cost	\$13,600	\$5,900	\$19,500

Optional analysis (Task 2B) – not included in recommended budget:

TOF: \$165 per sample

TOP: \$798 per sample

Sample handling/processing - \$110/sample

Schedule and Conditions

We will begin work upon receipt of a signed agreement. Task 1 will be completed within 3 weeks of authorization. The written summary report will be completed within 6 weeks following receipt of CLIENT approval of the approach that is developed in Task 1 and receipt of all turf samples.

We have made the following assumptions in the preparation of this proposal:

- The CLIENT will coordinate with the selected manufacturers of the synthetic turf component to deliver a sample of sufficient size to Tetra Tech. As part of this effort Tetra Tech will provide sample containers and information on the desired sample size.
- The CLIENT or their representative will provide information on the means and methods of installation of the synthetic turf at the Site such that we may review the potential for exposure to the various components. This information shall include sufficient details to determine approximate weight-based ratios of each of the selected four component materials of the finished synthetic turf product.
- The unit pricing for Task 2A includes laboratory analysis only. It is assumed that the CLIENT will coordinate delivery of samples of the selected synthetic turf components to Tetra Tech.

To signify your acceptance of this Agreement, please sign both copies provided and return one original and retainer to us along with the attachments. When signed by representatives of both parties, this Proposal will become an agreement between Tetra Tech, Inc. (ENGINEER) and Martha's Vineyard Commission (CLIENT). The Agreement is subject to the attached Remediation, Assessment & Compliance Division Statement of Terms and Conditions. The price and schedule are valid for 60 days from the date of this letter.

We appreciate the opportunity to provide these services, and we look forward to working with you. Please call me at 508-786-2363 if you have any questions.

Very truly yours,



Ronald E. Myrick, Jr., P.E., L.S.P.
Director of Environmental



Accepted by:

Adam Turner
MVC Executive Director

Nov. 2, 2020

Date

Attachments

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Schedule of Hourly Rates

Hourly Billing Rates for: **TT INE (NE)**
 Rates Effective Starting: **February 1, 2020**

Personnel	Hourly Rate
Operations Management	
Operations Management	
Technical Director 1	\$230.00
Technical Director 2	\$240.00
Technical Director 3	\$265.00
Program Director	\$280.00
Principal in Charge	\$310.00
Project Management	
Project and Program Management	
Specialist	\$160.00
Project Manager 1	\$175.00
Project Manager 2	\$180.00
Senior Project Manager 1	\$193.00
Senior Project Manager 2	\$205.00
Program Manager	\$210.00
Engineering and Architectural Services	
Engineers	
Engineer 1	\$110.00
Engineer 2	\$125.00
Engineer 3	\$130.00
Project Engineer 1	\$135.00
Project Engineer 2	\$158.00
Sr Engineer 1	\$163.00
Sr Engineer 2	\$166.00
Sr Engineer 3	\$168.00
Principal Engineer	\$172.00
Architectural Services	
Architect	\$180.00
Designer	\$122.00
Interior Designer	\$155.00
Landscape Architect	\$145.00
Imaging (3D) Specialist	\$122.00
Space Planner	\$155.00
Scientific Services	
Scientists	
Scientist 1	\$110.00
Scientist 2	\$120.00
Scientist 3	\$125.00
Sr Scientist 1	\$135.00
Sr Scientist 2	\$155.00
Sr Scientist 3	\$170.00
Planning Services	
Planners	
Planner 1	\$105.00
Planner 2	\$110.00
Planner 3	\$115.00
Sr Planner 1	\$160.00
Sr Planner 2	\$170.00
Technical Services	
Technicians	
Technician 1	\$85.00
Technician 2	\$90.00

Schedule of Hourly Rates

Hourly Billing Rates for: **TT INE (NE)**
 Rates Effective Starting: **February 1, 2020**

Personnel	Hourly Rate
Project Support	
Computer Aided Design (CAD)	
CAD Designer	\$115.00
Sr CAD Designer 1	\$140.00
Sr CAD Designer 2	\$145.00
CAD Director	\$155.00
Business Support	
Project Administration	
Project Assistant 1	\$75.00
Project Assistant 2	\$90.00
Project Administrator	\$100.00
Sr Project Administrator	\$120.00
Finance / Accounting	
Project Analyst 1	\$98.00
Project Analyst 2	\$112.00
Sr Project Analyst	\$150.00
Technical Writers	
Technical Writer 1	\$95.00
Technical Writer 2	\$110.00
Sr Technical Writer	\$115.00
Graphics	
Graphics Specialist	\$98.00
Graphic Artist	\$103.00
Sr Graphic Artist	\$108.00
Consulting	
Consultant 1	\$100.00
Consultant 2	\$110.00
Sr Consultant 1	\$120.00
Sr Consultant 2	\$130.00

Reimbursable Expenses - Non-routine expenses including, but not limited to outside printing, in-house report and document printing/copying, color copying/printing, large format plotting, delivery charges, travel, meals, lodging, subcontractor charges and other major expenses incurred for the project will be billed at cost plus 10 percent.

Payment - Invoices are issued monthly and are payable within 30 days of their issue date. In the event payment is delayed beyond 60 days from the issuance date, interest shall accrue at 1.5 percent per month on the unpaid balance.

Expert Testimony - A surcharge of 50 percent shall be added for expert witness testimony or participation in hearings or depositions, including preparation time.

Engineering, Environmental, and Transportation Statement of Terms and Conditions

Tetra Tech, Inc. (ENGINEER) and CLIENT agree as follows:

Section 1. Services. ENGINEER shall provide CLIENT with the "Services" set forth in the Proposal under the following terms and conditions.

Section 2. Billing and Payment. CLIENT recognizes that time is of the essence with respect to payment of the ENGINEER's invoices, and that timely payment is a material part of the consideration of this AGREEMENT.

The CLIENT shall pay the ENGINEER for services performed in accordance with the rates and charges set forth herein. Invoices will be submitted by the ENGINEER from time to time, but no more frequently than every two weeks, and shall be due and payable within thirty (30) calendar days of invoice date. If the CLIENT objects to all or any portion of an invoice, the CLIENT shall so notify the ENGINEER within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice, if any, not in dispute.

The CLIENT shall pay an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by the ENGINEER more than thirty (30) calendar days from the date of the invoice, except any portion of the invoiced amount in dispute and resolved in favor of the CLIENT. Payment thereafter shall first be applied to accrued interest and then to the principal unpaid amount. Payment of invoices is in no case subject to unilateral discounting or setoffs by the CLIENT.

Application of the percentage rate indicated above as a consequence of the CLIENT's late payments does not constitute any willingness on the ENGINEER's part to finance the CLIENT's operation, and no such willingness should be inferred. If the CLIENT fails to pay undisputed invoiced amounts within thirty (30) calendar days of the date of the invoice, the ENGINEER may at any time, without waiving any other claim against the CLIENT and without thereby incurring any liability to the CLIENT, suspend this AGREEMENT by fourteen (14) days written notice to the CLIENT until payment is restored to a current basis. Any suspension shall extend the schedule for performance by the ENGINEERS in a manner that is satisfactory to both the CLIENT and the ENGINEER.

Notwithstanding any termination of Services by ENGINEER for non-payment of invoices, CLIENT shall pay ENGINEER in full for all Services rendered by ENGINEER to the date of termination of Services plus all interest. CLIENT shall reimburse ENGINEER for all costs and expenses of collection, including reasonable attorneys' fees. ENGINEER's non-exercise of any rights or remedies, whether specified herein or otherwise provided by law, shall not be deemed a waiver of any such rights or remedies, nor preclude ENGINEER from the exercise of such rights or other rights and remedies under this instrument, or the law.

Section 3. Delays. In the event that the ENGINEER's work is interrupted due to causes beyond his or her control, the ENGINEER shall be compensated for the labor, equipment and other costs the ENGINEER incurs in order to maintain his or her workforce for the CLIENT's benefit during the interruption,

or--at the CLIENT's option--the various costs the ENGINEER incurs for demobilization and subsequent remobilization. Compensation to the ENGINEER shall be based upon the ENGINEER's prevailing fee schedule and expense reimbursement policy. Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of the other party, and which could not reasonably have been anticipated or prevented. Should such acts occur, the CLIENT and the ENGINEER shall utilize their best efforts to overcome the resulting difficulties and resume conduct of services called for herein as soon as reasonably possible. Delays within the scope of this provision that cumulatively exceed forty-five (45) calendar days shall, at the option of either party, make this AGREEMENT subject to renegotiation or termination.

Section 4. Standard of Care. ENGINEER's Services will be performed on behalf of and solely for the exclusive use of CLIENT for the purposes set forth in the Proposal and no others. CLIENT acknowledges that ENGINEER's Services require decisions which are not based upon science, but rather upon judgmental considerations. CLIENT, in accepting ENGINEER's Proposal, acknowledges the inherent risks to CLIENT and its property associated with the work described in the Proposal.

ENGINEER will perform its Services in accordance with generally accepted practices of Engineers and Scientists undertaking similar studies in the area, and in performing such Services, ENGINEER will observe that degree of care and skill as is generally exercised by members of such professions in the same locale acting under similar circumstances and conditions. CLIENT acknowledges that ENGINEER's Services will be rendered without any other warranty, expressed or implied, beyond ENGINEER's observance of such standard of care.

Section 5. Insurance. ENGINEER maintains Worker Compensation Insurance with respect to its employees with statutorily required limits. ENGINEER maintains public liability and property damage insurance policies. Certificates of Insurance evidencing such coverage will be provided to CLIENT, upon written request. CLIENT acknowledges that ENGINEER will not be liable to CLIENT for any loss, damage, cost or expense which, in the aggregate, are greater than the amounts of ENGINEER's insurance coverage limits, exclusions and conditions as set forth in such policies, except to the extent that ENGINEER is found by a final judgment of a Court of competent jurisdiction to have caused any loss, cost, damage or expense solely by reason of ENGINEER's gross negligence. Claims against ENGINEER based upon failure to perform in its professional acts in accordance with the Standard of Care required in Section 4 are limited by the provisions of Section 6.

Section 6. Limitation of Professional Liability. To the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and Tetra Tech, Inc.'s officers, directors, employees, agents, and independent professional associates and consultants, and any of them, to CLIENT and any one claiming by, through or under CLIENT, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to ENGINEER's services, the project or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of ENGINEER or ENGINEER's officers, directors,

employees, agents or independent professional associates or consultants, or any of them, shall not exceed the total compensation received by ENGINEER under this Agreement, or the total amount of \$50,000, whichever is greater.

Section 7. Documents. All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents, data or information prepared by ENGINEER as instruments of Service, shall remain the sole property of ENGINEER. Documents will not, in whole or in part, be disseminated or conveyed to any other party, nor used by any other party in whole or in part, without the prior written consent of Engineer, except as required by law. All reports and other work prepared by ENGINEER for CLIENT shall be utilized solely for the intended purposes and Site described in the Proposal. ENGINEER will retain all pertinent records for a period of three (3) years following the submission of ENGINEER's report to CLIENT. Such records will be available to CLIENT upon request at ENGINEER's office during office hours on reasonable notice, and copies will be furnished by ENGINEER to CLIENT for the total cost of reproduction of the same.

Section 8. Termination. The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms thereof through no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered and reimbursable expenses incurred to the date of termination and in addition, all reimbursable expenses directly attributable to termination.

Section 9. Governing Law; Severability; Assignment. This agreement between ENGINEER and CLIENT as set forth in the Proposal and in these Terms and Conditions shall be governed by and enforceable in accordance with the law of the Commonwealth of Massachusetts. The provisions of these Terms and Conditions are severable. The invalidity of any part of these Terms and Conditions shall not invalidate the remainder of these Terms and Conditions nor the remainder of any portion thereof. CLIENT shall not assign any aspect of the agreement between CLIENT and ENGINEER except upon the prior written consent of ENGINEER.

Section 10. Right of Entry. CLIENT grants to ENGINEER the right, exercisable from time to time, of entry to the Site by ENGINEER, its agents, employees, consultants, contractors and subcontractors, for the purpose of performing all project related activities, including the making of surveys, test borings and other environmental investigations as described in the Proposal. Should CLIENT not own the Site, CLIENT warrants and represents by acceptance of the Proposal that it has authority and permission of Site owner and any Site occupant to grant ENGINEER this right of entry.

Section 11. Control of Site. CLIENT acknowledges that it is now and shall remain in control of the Site at all times. ENGINEER shall have no responsibility or liability for any aspect or condition of the Site, now existing or hereafter arising or discovered. ENGINEER does not, by its entry into an agreement with CLIENT, or its performance of services under any such agreements as set forth in the Proposal, assume any responsibilities or liability with respect to the Site; nor shall any liability or responsibilities be implied or inferred by reason of ENGINEER's performance of any work under the Proposal.

Section 12. Subsurface Explorations. ENGINEER will take reasonable precautions to minimize damage to the property from use of equipment, but have not included in the fee the costs of restoration of damage that may result from such operations. If ENGINEER is required to restore the property to its former condition, the cost will be added to its fee.

In addition, CLIENT recognizes that commonly used exploration methods (such as drilling borings, pushing or driving probes, or excavating trenches) involve an inherent risk. These exploration methods may penetrate through a stratigraphic unit bearing Hazardous Materials and serve as a connecting passageway between such stratigraphic unit and an uncontaminated stratigraphic unit or groundwater, thus potentially inducing cross-contamination. In accordance with current design, backfilling with grout or by other means is intended (but does not guarantee) to provide a seal against such a passageway. However, CLIENT recognizes that such a seal may be imperfect and that there is an inherent risk in drilling borings, pushing or driving probes, excavating trenches, or implementing other methods of exploration at or near a site contaminated by Hazardous Materials. Further, CLIENT recognizes that these are not the only risks which may be encountered, but are simply examples of consequences which cannot be anticipated or avoided in many cases, even through the exercise of the Required Standard of Care. CLIENT accepts these and all similar risks and releases ENGINEER from any and all liability that may be incurred as a result of the Services provided by ENGINEER, provided that such services were performed in accordance with the Required Standard of Care.

Section 13. Information Provided by Others. The ENGINEER shall indicate to the CLIENT the information needed for rendering of services hereunder, including but not limited to field survey information. The CLIENT shall provide to the ENGINEER such information as is available to the CLIENT. The CLIENT recognizes that it is impossible for the ENGINEER to assure the sufficiency of such information, either because it is impossible to do so, or because of errors or omissions which may have occurred in assembling the information. Accordingly, the CLIENT waives any claim against the ENGINEER, and agrees to defend, indemnify and hold the ENGINEER harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to the ENGINEER by the CLIENT. Further, the CLIENT agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER in defense of any such claim, with such compensation to be based upon the ENGINEER's prevailing fee schedule and expense reimbursement policy.

Section 14. Compliance with Codes and Standards. The ENGINEER's professional services shall be consistent with sound engineering practices and shall incorporate those federal, state and local laws, regulations, codes, policies and standards that are applicable at the time the ENGINEER rendered his or her services. In the event of a change in laws, regulations, et al., of which the ENGINEER becomes aware and which the ENGINEER believes affects work for the CLIENT, the ENGINEER shall inform the CLIENT of the change and its impact on work already done or to be done, fees and costs involved, and scheduling. If either the CLIENT or the ENGINEER believes the change requires a renegotiation of this AGREEMENT, both the CLIENT and the ENGINEER agree to bargain promptly and in good faith, to permit the ENGINEER to continue to meet the CLIENT's needs. If a renegotiated contract cannot be agreed to, the CLIENT agrees the

ENGINEER has an absolute right to terminate this Agreement. In any event, the CLIENT waives any claim against the ENGINEER, and agrees to defend, indemnify and hold the ENGINEER harmless from any claim or liability for injury or loss allegedly arising from the ENGINEER's failure to abide by federal, state and local laws, regulations, codes and standards that were not in effect or public policies announced at the time when the ENGINEER's otherwise would have incorporated their intent into the work. The CLIENT further agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER in defense of any such claim, in accordance with the ENGINEER's prevailing fee schedule.

Section 15. Monitoring of Construction. CLIENT recognizes that unanticipated or changed conditions are likely to be encountered during construction. CLIENT agrees to indemnify ENGINEER from any claims arising from these unanticipated or changed conditions unless CLIENT agrees to retain ENGINEER to monitor construction, and ENGINEER agrees to assign to the monitoring function persons qualified to observe and report on the quality of work performed by contractors, et al. CLIENT recognizes that construction monitoring is a technique employed to minimize the risk of problems arising during construction. Provision of construction monitoring by ENGINEER is not insurance, nor does it constitute a warranty or guarantee of any type. In all cases, contractors, et al., shall retain responsibility for the quality of their work and for adhering to plans and specifications, including responsibility for maintaining legal methods of transport and appropriate locations for disposal of materials. Should CLIENT for any reason not retain ENGINEER to monitor construction, or should CLIENT unduly restrict ENGINEER's assignment of personnel to monitor construction, or should ENGINEER for any reasons not perform construction monitoring during the full period of construction, ENGINEER shall not have the ability to provide a complete service. Should ENGINEER for any reasons not have the ability to perform a complete service, and thus not have the capability for adequate control of implementation of the complete engineering function, CLIENT waives any claim against ENGINEER, and agrees to indemnify, defend and save ENGINEER harmless for any claim or liability for injury or loss arising from problems during construction that allegedly result from findings, conclusions, recommendations, plans or specifications developed by ENGINEER. CLIENT also agrees to compensate ENGINEER for any time spent and expenses incurred by ENGINEER in defense of any such claim, with such compensation to be based upon ENGINEER's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project expenses.

Section 16. Legal Actions. All legal actions by either party to this Agreement against the other party for breach of this Agreement, failure to perform under this Agreement in accordance with an applicable standard of care, indemnity, or contribution (however denominated) shall be barred two years from the day after the date on which the party bringing the action knew or reasonably should have known of the facts giving rise to the cause or causes of action; but in no event may any such claim be filed, commenced or otherwise asserted more than two years from the date on which the ENGINEER completes its services. Nothing in this paragraph shall be construed in any way to extend the time period for the filing of a legal action under any applicable statute of repose.