

23-2455 S

December 18, 2023

City of Caribou, Maine
C/o: Artifex Architects-Engineers
Attention: Raysshelly Lizotte, P.E.
175 Exchange Street
Bangor, ME 04401

Subject: Proposal
Explorations and Geotechnical Engineering Services
Proposed Police Station
Fort Street
Caribou, Maine

Dear Shelly:

As requested, we have prepared this Proposal to provide explorations and geotechnical engineering services for the subject project. The purpose of our services is to obtain subsurface information in order to provide geotechnical recommendations for foundations and earthwork associated with the proposed construction.

SITE AND PROPOSED CONSTRUCTION

The site is located at the southwest parcel at the intersection of Fort Street and U.S. Route 1 in Caribou, Maine. We understand the site currently consists of open grassed surfaced areas. Based on the provided Test Boring Location Plan (Plan), dated December 5, 2023, we understand the overall site generally slopes downward from southwest to northeast from about elevation 463 to 429 feet (project datum).

Based on our conversations and the provided Plan, we understand development plans call for the construction of a new police station, occupying a footprint of about 9,000 square feet. We understand the building will be two-stories, including a full, walk-out, basement. We anticipate the building will be wood- or steel-framed with basement floor slabs and spread footing foundations. Based on the Plan, we understand the basement

level is proposed at a Finish Floor Elevation (FFE) of 448.0 feet and the first floor is proposed at a FFE of 462.0 feet. Based on the existing grading shown on the Plan, we anticipate tapered cuts up to about 12 feet will be required to achieve the proposed basement FFE. We understand the eastern portion of the basement area will be daylighted to a lower-level parking area near the basement FFE. Based on the proposed site grades, we understand the building will include a ground level entrance to the first floor along the western side of the building. Details regarding proposed structural loading are unknown at this time.

We understand the eastern portion of the site will include new lower level parking areas, including about 16 parking spots, and stormwater management areas. Additionally, we understand a new retaining wall is proposed along the southern extents of the lower-level parking area for grade separation between the upper and lower parking areas. We understand the retaining wall is proposed over a linear distance of about 80 feet and up to 13 feet in height. We understand the southern and western portions of the site will include new parking areas, access drives and stormwater management areas.

ANTICIPATED CONDITIONS

Based on our previous experience near the project site and available soil mapping, we anticipate the subsurface profile likely consists of surficial fills from previous site development overlying glacial till mantling bedrock.

SCOPE OF SERVICES

S. W. Cole Engineering, Inc. (S.W.COLE) will coordinate an exploration program consisting of test borings, complete soils laboratory testing and make a geotechnical evaluation of the subsurface findings relative to foundations and earthwork associated with the proposed construction.

Exploration & Testing: As requested by Artifex, we plan to complete 21 test borings at the locations shown on the Test Boring Location Plan, prepared by Artifex. We will perform 4 test borings within the building footprint to depths of 30 feet, or refusal, if shallower. If refusal surfaces are encountered above 30 feet, we will attempt to obtain 5 feet of rock core from each boring using NQ rock coring techniques. We will perform 9 test borings along the building perimeter to depths of 30 feet, or refusal, if shallower. We will perform 8 test borings over the remainder of the site to depths of 10 feet, or refusal,

if shallower. The soils in the test borings will be sampled at 2 to 5-foot intervals using a split spoon sampler and Standard Penetration Test (SPT) methods.

The test borings will be made by Seaboard Drilling working under subcontract to S.W.COLE. We will pre-mark the exploration locations in the field and contact DigSafe and OKTODIG to notify member and non-member utilities prior to drilling. CLIENT will furnish to S.W.COLE a dimensioned plan identifying the type and location of underground utilities and/or other manmade objects beneath the site. S.W.COLE will determine the need to engage a subcontractor, on Clients' behalf, to locate underground utilities and/or other manmade objects in the immediate vicinity of proposed subsurface explorations. Neither S.W.COLE nor its subcontractors shall be responsible for any loss arising from damage to or contact with buried utilities and/or other manmade objects that were not brought to the attention of S.W.COLE prior to commencement of S.W.COLE's exploration program.

Laboratory Testing: The soil samples obtained from the explorations will be returned to our laboratory for moisture content and gradation testing.

Analysis & Report: We will evaluate the subsurface findings relative to foundations and earthwork associated with the proposed construction. Our findings will be presented in a written report including:

- Summary of Subsurface Conditions (soil, bedrock, and groundwater)
- Excavation and Dewatering Considerations
- Recommendations for Site and Subgrade Preparation
- Geotechnical Parameters for Spread Footings, as appropriate
- Seismic Soil Site Class (IBC 2015, N-Value method)
- Recommendations for Foundation Drainage
- Subgrade Modulus for Floor Slabs
- Recommendations for Backfill and Compaction
- Suitability for Re-Use of Site Soils

An exploration location plan (base plan provided by CLIENT), logs of the explorations, and soils laboratory test results will be attached to our report. Our report will be provided in reproducible portable document file (pdf) format.

SCHEDULE

Based on current schedules, we anticipate test borings can begin within 4 weeks of notice to proceed. Our report will be available within 2 weeks after completion of the explorations. We can provide preliminary information prior to report submittal to assist the project schedule.

BUDGET AND COMPENSATION

S.W.COLE will charge a lump sum fee of \$31,900 for the services described herein. Private utility locating services will be charged as an additional fee at a unit rate of \$250 per hour. Post-report consultation and construction phase services are not included in the fee but can be provided on an additional unit-rate basis, as needed.

Additional test borings will be charged at an additional rate of \$20 per foot in soil and \$50 per foot in rock if the work can be performed within the allotted drilling schedule. If the additional explorations require additional drill days, we will charge an additional \$4,900 per day.

TERMS AND CONDITIONS

Services provided by S.W.COLE are subject to our attached Terms and Conditions. To confirm our understanding, please return a signed copy of this Proposal for our files. The signed Proposal will constitute our contract.

Sincerely,

S. W. Cole Engineering, Inc.

Nathan D. Strout, P.E.
Senior Geotechnical Engineer



Timothy J. Boyce, P.E.
Vice President

NDS:tjb

CONTRACT ACCEPTANCE

SIGNATURE: _____

PRINT NAME: _____

TITLE: _____

COMPANY: _____

DATE: _____

TEL./EMAIL: _____



S. W. Cole Engineering, Inc. Terms and Conditions

The following Terms and Conditions, together with the attached Proposal or Agreement (Agreement) constitute the terms of the agreement between S. W. Cole Engineering, Inc. (S.W. COLE) and the party that authorizes performance of services (Client) with respect to the performance of any services.

1. Scope of Services

S.W.COLE shall perform the services described in the attached Agreement, and “services” referenced herein refer to these services.

2. S.W.COLE’s Responsibility

- 2.1 Perform services in accordance with the attached Proposal/Agreement.
- 2.2 Perform services in a manner that is consistent with other similar firms providing similar services in the same geographic area at the time services are rendered.
- 2.3 Comply with federal, state and local laws in so far as applicable to the services contemplated under this Agreement.
- 2.4 Maintain professional licenses necessary for the performance of services.
- 2.5 Inform Client of changes in conditions or circumstances that could impact the cost or timing of services.
- 2.6 Pay all applicable employment taxes and benefits for S.W.COLE’s employees.

3. Client Responsibilities

- 3.1 Furnish to S.W.COLE, as needed for performance of S.W.COLE’s services, the following. Client acknowledges that S.W.COLE has the right to reasonably rely on information provided.
 - 3.1.1 any existing data, including, without limitation, borings, probings and subsurface explorations, environmental reports, laboratory tests, and other data relative to site exploration, design or construction of the project;
 - 3.1.2 property boundary, easement, right-of-way, topographic and utility surveys, other information depicting existing subsurface utilities and structures, and property descriptions.
- 3.2 Give prompt written notice to S.W.COLE whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of S.W.COLE’s services.
- 3.3 Arrange for S.W.COLE, its agents, subcontractors and representatives to have safe access to the site and buildings thereon, and other locations as required, at reasonable times throughout the performance of the services.
- 3.4 Acknowledge that S.W.COLE is a corporation and agree that any claim made by the Client arising out of any act or omission of any present or past officer or employee of S.W.COLE in the execution or performance of this Agreement, shall be made against S.W.COLE and not against such officer or employee.

4. Insurance

S.W.COLE maintains worker's compensation insurance of a form and in the amount required by state law. S.W.COLE maintains general liability, automobile liability and professional liability coverage. Certificates for insurance coverage will be provided to the Client upon request and S.W.COLE will promptly notify the Client of any impending change in coverage. S.W.COLE shall comply with Client's reasonable requests for special endorsements, additional limits, additional coverages, et al., providing these are available to S.W.COLE, and Client remunerates S.W.COLE for the cost thereof.

5. Engagement of Laboratories and Others

If so requested or agreed by the Client, S.W.COLE will engage the services of laboratories, drillers, testing firms and subconsultants (third parties) to perform suitable aspects of the services. Invoices for such third-party services will be reviewed for accuracy and completeness by S.W.COLE. If acceptable, payment to these third parties will be made directly by

S.W.COLE. S.W.COLE will recommend the use of such third parties with reasonable care but does not guarantee their services and will not be liable for their errors or omissions.

6. Billing and Payment

- 6.1 The Client shall pay S.W.COLE in accordance with the rates and charges set forth in this Agreement or otherwise agreed upon. S.W.COLE will generally submit invoices for services rendered and expenses incurred during the previous period on a four (4) week periodic basis. For projects billed at unit rates, reimbursable expenses (e.g., mileage, tolls, lodging, supplies) will be invoiced at cost plus 5 percent; unless otherwise set forth in the Agreement, subcontracted services (e.g., explorations or laboratory testing) will be invoiced at cost plus 15 percent.
- 6.2 Payment will be due upon receipt of S.W.COLE's invoice. Payments due S.W.COLE and unpaid under the terms of this Agreement shall bear interest from thirty (30) days after the date payment is due at the rate of one and one half (1.5) percent per month (18 percent per annum). If S.W.COLE is compelled to take action to collect past due payments, the Client will reimburse S.W.COLE for all costs and expenses of collection, including without limitation all court costs and reasonable attorney's fees.
- 6.3 If the scope of the project or of S.W.COLE's services is changed materially, the amount of compensation shall be equitably adjusted between the Client and S.W.COLE.
- 6.4 If the project is suspended or abandoned in whole or part, S.W.COLE shall be compensated for all services performed prior to receipt of written or oral notice from the Client of such suspension or abandonment, together with other expenses then due and project closeout costs. If the project is resumed after being suspended for more than three (3) months, S.W.COLE's compensation shall be equitably adjusted between the Client and S.W.COLE.
- 6.5 Provided that S.W.COLE gives Client thirty (30) calendar days' written notice about the additional amounts involved, S.W.COLE shall have the right to increase the compensation payable by Client to S.W.COLE if performance of this Agreement extends beyond twelve (12) months.
- 6.6 No deductions shall be made from S.W.COLE's compensation on accounts or sums withheld from payments to contractors, nor shall payment to S.W.COLE be contingent upon financing arrangements or receipt of payment from any third party.
- 6.7 If the Client fails to make payment when due S.W.COLE for services and other expenses, S.W.COLE may, upon seven (7) days' written notice to Client suspend performance of services under this Agreement. Unless payment in full is received by S.W.COLE within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, S.W.COLE shall have no liability to Client for delay or damage caused to Client or others because of such suspension of services.

7. Ownership of Instruments of Service

Plans, specifications, reports, boring logs, calculations, field data, field notes, laboratory and field test data, estimates, and similar documents and materials (other than samples) prepared by or for S.W.COLE as instruments of service are S.W.COLE's property. S.W.COLE shall retain these instruments of service for three (3) years following submission of project deliverables, during which period S.W.COLE's instruments of service will be made available for Client's review at any reasonable time. If Client wants S.W.COLE to retain instruments of service for a longer period, Client shall notify S.W.COLE in writing before expiration of the retention period otherwise prevailing. Client shall remunerate S.W.COLE for additional storage at a fee agreed to by S.W.COLE and the Client. Any reuse or modification of any such documents by Client, without S.W.COLE's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold S.W.COLE harmless from all claims; damages; and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through the Client.

8. Limitation of Remedies

Client and S.W.COLE have discussed the risks and rewards associated with this project, as well as S.W.COLE's fee for services. Client and S.W.COLE agree to allocate certain of the risks so that, to the fullest extent permitted by law, S.W.COLE's total aggregate liability to Client is limited to \$50,000.00 or the fee of S.W.COLE, whichever is greater, for any and all injuries, damages, claims, losses, expenses or claim expenses (including attorneys' fees) arising out of this Agreement

based on any cause or under any theory of liability. Such causes or legal theories include, but are not limited to, S.W.COLE's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, and claims for indemnification or contribution. It is intended by the parties that this provision shall apply to the obligations set forth in Paragraph 10 of this Agreement. Client further expressly agrees that unless otherwise mutually agreed to in writing by both parties, all subsequent work performed by S.W.COLE on behalf of Client concerning the property covered by this Agreement will be pursuant to an addendum to this Agreement. This Limitation of Remedies clause will extend to, and applies to, all subsequent work performed by S.W.COLE and/or its subcontractors for Client for this property.

In the event Client does not wish to limit S.W.COLE's liability for this work, or subsequent work done under this project number, to the greater of \$50,000 or S.W.COLE's fee, S.W.COLE may agree to a higher limitation of remedy if the parties mutually agree in writing to an increase in S.W.COLE's fee because of the higher risk S.W.COLE may assume. Otherwise, this clause shall remain in effect.

9. Subsurface Risks

Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experience by personnel who function in accordance with a professional standard of practice, may fail to detect certain conditions. For similar reasons, actual environmental, geological, and geotechnical conditions that S.W.COLE inferred to exist between sampling points may differ significantly from those that actually exist. The Client will not hold S.W.COLE responsible for such special risks.

10. Indemnification and Hold Harmless

Subject to all otherwise applicable statutes of limitations and repose, and the provisions set forth in Section 8 above, S.W.COLE agrees to indemnify and hold Client, its directors, shareholders, employees, and assigns harmless for all claims, damages and causes of actions, to the extent such claims, damages and causes of action are caused by S.W.COLE's negligent acts, errors, or omissions.

Client agrees to indemnify and hold S.W.COLE, its past and present directors, shareholders, employees, and assigns harmless for all claims, damages and causes of actions, against S.W.COLE related to the performance of the services in connection with this project, unless such claims are based on or arise out of S.W.COLE's negligent acts or omissions.

11. Construction Phase Responsibilities

- 11.1 Definitions: Test(s) or Testing are defined herein as measurement, examination and other activities to assess the characteristics or performance of materials. Observation or Observe are defined herein as the act of visual evaluation, based on S.W.COLE's professional judgement, to evaluate general conformance with project requirements. Inspect or Inspection is defined herein as the visual determination of general conformance with specific project requirements. Contractor is defined herein as the general contractor as well as their subcontractors or subconstructors of any tier, retained to perform construction work on the project for which S.W.COLE is performing services under this Agreement.
- 11.2 No Control Over Contractor's Work: When S.W.COLE's services include the performance of any services during the construction phase of the project (including any visits to the site) S.W.COLE shall not, during such visits or as a result of any observations of construction, supervise, direct or have control over Contractor's work or schedule nor shall S.W.COLE have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) or safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing its (their) work. S.W.COLE does not guarantee the performance of the construction contract by the Contractor(s) and does not assume responsibility for contractor's failure to furnish and perform its (their) work in accordance with the contract documents.

- 11.3 Submittal Review: If S.W.COLE's contract with the Client so requires, S.W.COLE shall review (or take other appropriate action in respect of) shop drawings, samples and other data which Contractor(s) is (are) required to submit, but only for conformance with the design concept of the project and compliance with the information given in the contract documents. Such review or other actions shall not extend to means, methods, techniques, sequences or procedures of manufacture (including the design of manufactured products) or construction, or to safety precautions and programs incident thereto. S.W.COLE's review or other actions, as described above, shall not relieve the Contractor(s) of (a) its (their) obligations regarding review and approval of any such submittals; and (b) its (their) exclusive responsibility for the means, methods, sequences, techniques and procedures of construction, including safety of construction.
- 11.4 Variation of Materials Characteristics and Conditions: Observations and standardized sampling, inspection, and testing procedures indicate conditions of materials and construction activities only at the precise location where and precise time when S.W.COLE performed Services. Client recognizes that conditions of materials and construction activities at other locations may vary from those measured, observed, or inspected, and that conditions at one location and time cannot be relied on to indicate the conditions at other locations and times, even when the materials involved appear to be identical. Notwithstanding the foregoing, S.W.COLE may make inferences based upon the information derived from these procedures to formulate professional opinions about conditions in other areas. S.W.COLE is responsible only for those data, interpretations, and recommendations about the actual materials and construction activities it observes, inspects, samples, or tests. Even if performed on a continuous basis, services do not and should not be interpreted to mean that S.W.COLE is observing, inspecting, or testing all materials on the project. S.W.COLE is not responsible for other parties' interpretations or use of the information S.W.COLE developed.
- 11.5 Scheduling and Frequency of Observations: Client acknowledges that Client, directly or indirectly through its designee, has the sole right and sole responsibility to determine the extent, frequency, and scheduling of observations, inspections, and testing performed by S.W.COLE. Accordingly, Client also acknowledges that S.W.COLE bears no responsibility for damages that may accrue because S.W.COLE did not perform observations, inspections, or testing that Client failed to request or schedule.
- 11.6 Sampling, Observation, Inspection and Test Locations: Unless specifically stated otherwise, the scope of services intentionally excludes surveying the project site or precisely identifying sampling, observation, inspection, or test locations, depths, or elevations. In accordance with customary practice, S.W.COLE will base sampling, observation, inspection, and test locations, depths, and elevations on field estimates and information furnished by Client and its representatives. Unless stated otherwise in S.W.COLE's report(s), such locations, depths, and elevations are approximate.
- 11.7 No Responsibility for Site Safety: Client agrees that S.W. COLE shall have no responsibility for site safety under any circumstances.

12. Delays

Except as specifically set forth in this Agreement, neither party shall hold the other responsible or liable for damages or delays in performance caused by acts of God, interruptions in the availability of labor, criminal or malicious acts if by third parties, or other events beyond the control of the other party, or that could not have been reasonably foreseen or prevented. For this purpose, such acts or events shall include unusually severe weather affecting performance of services, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, protest demonstrations, unanticipated project site conditions, and inability, with reasonable diligence, to supply personnel, equipment, or material to the project, and cyber security events or attacks, including but not limited to ransomware, denial-of-service (DoS), distributed denial-of-service (DDoS), man-in-the-middle (MitM), phishing, data extortion, malware, and other cyber security events or attacks. Should such acts or events occur, both parties shall use their best efforts to overcome the difficulties arising and to resume as soon as reasonably possible the normal pursuit of the services under the Proposal for the specific project. Delays within the scope of this provision which cumulatively exceed thirty (30) days in any six (6) month period shall, at the option of either party, make this Agreement subject to termination or to renegotiation.

13. Hazardous Substances

- 13.1 The Client warrants that the Client has informed S.W.COLE of any hazardous substances which may be present if

the Client has knowledge or has any reason to assume or suspect that hazardous substances may be present at the subject property.

- 13.2 If during the course of the investigation hazardous substances are encountered, S.W.COLE retains the right to suspend work immediately unless S.W.COLE and the Client agree upon amendments to the contract which include provisions for revision of the scope of services, adjustment of budget estimates, and revised terms and conditions. If an amended Agreement is not made between the Client and S.W.COLE within seven (7) days of S.W.COLE's notice of suspension of work, further work under the contract will be terminated. The Client shall pay all fees and charges incurred under the provisions of the proposal through the date of termination.
- 13.3 The Client agrees to compensate S.W.COLE for the cost of decontamination of equipment, replacement of equipment, or other costs incident to the discovery of hazardous substances.
- 13.4 The Client agrees that samples, drill cuttings and other objects containing hazardous substances are not the responsibility of S.W.COLE. The Client agrees that the contaminated samples, contaminated drill cuttings, and other contaminated materials are the responsibility of the Client and are to be disposed of through arrangements selected and made by the Client.
- 13.5 The Client agrees that, in the event S.W.COLE does not discover hazardous substances at the subject site, it is understood that S.W.COLE cannot maintain that no hazardous substances exist at the subject site.
- 13.6 The Client recognizes the Client's responsibility to inform the property owner, if the property is not owned by the Client, of the discovery of hazardous substances or suspected hazardous substances. The Client further recognizes the Client's responsibility to make any disclosures of the discovery of hazardous substances or suspected hazardous substances required by law to the appropriate governing agencies.
- 13.7 The Client waives any claim against S.W.COLE and agrees to defend, indemnify, and save S.W.COLE harmless from any claim or liability for injury or loss of any type arising from the following. The Client shall remain liable for and shall pay all fees and charges incurred by S.W.COLE in defense of any such claim.
- S.W.COLE's discovery of hazardous substances or suspected hazardous substances, including any costs caused by delay of the project and any cost associated with possible reduction of the property's value.
 - All consequences of disclosures made by S.W.COLE which are required by governing law.
 - The application of a joint and several liability concept that would in any manner hold or seek to hold S.W.COLE responsible for creating a hazardous condition or permitting one to exist.
 - Cross contamination caused by sampling.
 - S.W.COLE's failure to detect hazardous sub-stances through techniques consistent with other professionals performing similar services in the geographic area at the time that the services are performed.

14. Oral Acceptance of Agreement

This Agreement's Terms and Conditions, of which this provision is a part, have been established in large measure to allocate certain risks between Client and S.W.COLE, and S.W.COLE will not initiate service without formal agreement on Terms and Conditions set forth in this Agreement. For purposes of convenience, Client may choose to accept this Agreement orally or to orally authorize S.W.COLE to initiate services. In that event, Client specifically agrees that, as a material element of the consideration S.W.COLE requires to execute the services indicated herein, oral acceptance or authorization to initiate services shall be considered by both parties to constitute formal acceptance of all terms and conditions of this Agreement. Unilateral modification of this Agreement subsequent to S.W.COLE's initiation of service is expressly prohibited. Furthermore, all preprinted terms and conditions on Client's purchase order or S.W.COLE's purchase order acknowledgement form are inapplicable to this Agreement and S.W.COLE's involvement in Client's project.

15. Claims and Dispute Resolution

- 15.1 Certificate of Merit: Client shall refrain from filing a professional negligence or negligent misrepresentation claim against S.W.COLE, either directly or via a third-party claim, until Client provides to S.W.COLE a certificate of merit prepared and signed by an independent consultant currently practicing the same discipline as CONSULTANT and licensed in the project state. To be valid, the certificate of merit shall identify: 1) the name, business address,

telephone number, and license number of the individual completing the certificate of merit; 2) the method that the individual used to identify the standard of care against which S.W.COLE's performance was evaluated; and 3) each error or omission the certifier contends is a violation of the standard of care and what S.W.COLE should have done to have maintained the standard of care. Said certificate shall be presented to S.W.COLE at least thirty (30) calendar days before the filing of any claim or initiation of any judicial or arbitration proceeding against S.W.COLE.

- 15.2 Dispute Resolution: Any claim, dispute or other matter in question arising out of or related to this agreement shall be subject to a meet and confer session as a condition precedent to mediation. The meet and confer session shall be attended by members senior management of the Client and S.W.COLE who shall have full authority to bind their respective party with respect to the claim, dispute or other matter in question. The meet and confer session shall take place within 30 days after a request by either party unless the parties mutually agree otherwise. If the parties reach a mutually acceptable resolution, they then shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with this agreement.

If the parties cannot reach a mutually acceptable resolution through the meet and confer session, S.W.COLE and Client agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of this date of this Agreement, except that this section shall not limit S.W.COLE's right to pursue all legal remedies for collection of its invoices.

If mediation is unsuccessful in resolving the dispute, the parties agree that the dispute will be resolved through litigation in a court of competent jurisdiction.

- 15.3 Consequential Damages: Client shall not be liable to S.W.COLE and S.W.COLE shall not be liable to Client for any consequential damages incurred by either due to the fault of the other, regardless of: the nature of this fault; or whether it was committed by Client or S.W.COLE, their employees, agents, or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

16. Miscellaneous

- 16.1 This Agreement shall be governed and construed in accordance with the laws of the state in which the project is located.
- 16.2 Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of the Agreement or for any other purpose.
- 16.3 The Client and S.W.COLE respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such party with respect to all covenants of this Agreement. Neither the Client nor S.W.COLE shall assign, sublet or transfer any interest in this Agreement without the written consent of the other. This section shall not, however, apply to any subrogation rights (if any) of any insurer of either party. This section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between parties.
- 16.4 This Agreement represents the entire and integrated agreement between the Client and S.W.COLE and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instruments signed by both Client and S.W.COLE.
- 16.5 Where the services include subsurface explorations, the Client acknowledges that the use of exploration equipment may alter or damage the terrain, vegetation, structures, improvements, or property at the site and Client accepts that risk. Provided that S.W.COLE uses reasonable care, S.W.COLE shall not be liable for such alteration or damage. Prior to drilling or digging on the Site, Client will furnish documents or other information to S.W.COLE that allows it to properly identify the type and location of utility lines and/or other manmade objects beneath the Site's

surface. S.W.COLE will take reasonable precautions to avoid damaging man-made objects, which may include engaging a subcontractor on Client's behalf to locate manmade objects prior to drilling or digging on the Site. Client shall, to the fullest extent permitted by law, waive any claim against S.W.COLE, and indemnify, defend and hold S.W.COLE harmless from any claim or liability for injury or loss arising from damage to or contact with buried utility lines or other buried manmade objects that were not called to S.W.COLE's attention or which are not properly identified, marked or represented on drawings furnished to S.W.COLE.

- 16.6 The proposed language of any certificates, affidavits or certifications requested of S.W.COLE or S.W.COLE's consultants shall be submitted to S.W.COLE for review and approval at least fourteen (14) days prior to execution. The Client shall not request certification and/or affidavits that would require knowledge or services beyond the scope of this Agreement or beyond the professional qualifications and engineering experience of S.W.COLE.
- 16.7 Any estimates or opinions of project or construction quantities and costs are provided by S.W.COLE on the basis of S.W.COLE's experience and represents its best judgment. Since S.W.COLE has no control over the cost of labor, materials, equipment or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids or actual project costs or construction costs will not vary from any estimates or opinions of costs prepared by S.W.COLE.
- 16.8 Samples for materials testing projects will be disposed of after laboratory test results have been reported. For other types of projects, S.W.COLE will dispose of all soil, rock, and other samples ninety (90) days after submission of S.W.COLE's initial report. Client may request, in writing, that any such samples be retained beyond such date, and in such case S.W.COLE will ship such samples to the location designated by Client, at Client's expense. S.W.COLE may, upon written request, arrange for further storage of samples at mutually agreed storage charges. S.W.COLE will not give Client prior notice of intention to dispose of samples. S.W.COLE will not be responsible for disposing of contaminated samples.
- 16.9 In the course of providing services to the Client, the Client may request S.W.COLE to communicate directly with other individuals or firms involved with the project. It is understood that any such direct communication with third parties is done as a convenience to and for the sole benefit of the Client and is an extension of S.W.COLE's services to the Client. The Client expressly agrees that S.W.COLE's services, including these third-party communications are provided for the exclusive use of the Client and the Client understands and agrees that only the Client shall have a right to rely on documents, interpretations, opinions, recommendations or conclusions provided by S.W.COLE, or any consultation given in connection with S.W.COLE's services. In the event that Client requests that S.W.COLE communicate directly with a third party, including but not limited to, architects, engineers, other designers, or contractors, regarding our services, provides S.W.COLE's instruments of service to such third parties, or Client requests that S.W.COLE review the designs of such third parties, Client agrees to indemnify and hold S.W.COLE harmless from claims brought against S.W.COLE by those third parties arising out of or related to their use of documentation or other information provided by S.W.COLE.