



**DESERT HEALTHCARE DISTRICT
HOSPITAL GOVERNANCE AND OVERSIGHT COMMITTEE MEETING
October 23, 2017
10:00 A.M.**

Jerry Stergios Building, 2nd floor
Arthur H. "Red" Motley Boardroom
1140 N. Indian Canyon Drive, Palm Springs, California 92262
This meeting is handicapped-accessible

Page(s)	AGENDA	Item Type
	I. CALL TO ORDER - Dr. Les Zendle, Chair	
	II. INTRODUCTIONS	
1	III. APPROVAL OF AGENDA	Action
	IV. APPROVAL OF JULY 24, 2017 MEETING MINUTES	Action
	V. PUBLIC COMMENTS	
	VI. OLD BUSINESS	
2-9	VII. NEW BUSINESS 1. Consideration to Approve the Proposed Draft Contract - Facility Condition Assessment	Action
	VIII. ADJOURNMENT	
	NEXT MEETING	
	IX. Monday, November 27, 2017 at 10 a.m.	

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Assessment & Consulting Services
CBRE | Valuation & Advisory Services
3501 Jamboree Road, Suite 100 | Newport Beach, CA 92660
Ph: 949 809 4106

To: D. Chris Christensen, CPA
Firm: Desert Healthcare District/Foundation
Address: 1150 N Indian Canyon Drive
Palm Springs, CA 92262
Tel: (760) 323-6356
Cell: (760) 567-0051
Email: cchristensen@dhcd.org
Date: October 6, 2017
From: Michael LaFalce michael.lafalcejr@cbre.com
Jason Lind jason.lind@cbre.com

Re: Fee Quotation for Consulting Services
Desert Regional Medical Center – 600,000 SF
1150 N Indian Canyon Drive
Palm Springs, CA 92262
CBRE Proposal No.: **PC71038638**

As a follow-up to your RFP, CBRE, Inc., a Delaware corporation (hereafter "Consultant") is pleased to submit this proposal to Desert Regional Medical Center (the "Client") to provide the following services:

Task 1 – Facility Condition Assessment – Multi-Assessor Team – SME – SSC

The Scope of Work will be to perform a Facility Condition Assessment (FCA). The FCA will be performed in general conformance with ASTM E 2018 – 15, Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process. The purpose of the FCA will be to provide a baseline report for use in Capital Planning Initiatives. A site visit of the property will be conducted by a CBRE Team consisting of:

- Generalist, typically an Architect or Engineer (Team Lead)
- Mechanical, Electrical and Plumbing Subject Matter Expert, typically an Engineer (MEP SME)

The Team Leader will guide the efforts of the entire Due Diligence Team and the Team will endeavor to evaluate 100% of the Readily Accessible; Site Systems, Structural Systems, Building Envelope Systems, Plumbing Systems, Mechanical Systems, Electrical Systems, Parking Garages, Fire and Life Safety and Conveying Systems. Additionally, the Team will endeavor to evaluate 20% of the Readily Accessible Interior Areas. Our report will focus on infrastructure condition, ages, capacities, deferred maintenance, and remaining useful life. A debrief call with Project Reviewer (Senior Architect or PE, providing overall QA/QC, and support to the team from the office) and other team members selected by your group within a few days of the completion of the site visits.

Short Term and Long Term cost schedules will be provided. Short Term costs will include a deficiency description, recommended remediation and associated cost for repair or replacement. A photo of the deficiency will be included. Long Term Capital Reserve cost schedules will include a description of the building systems, age, remaining useful life and cost projections for replacement and maintenance.

We prefer that a building engineer or maintenance staff member familiar with this property and its history accompany us during our walk-through of the buildings. During the site visit, visual observations will be made to note the general condition of the property and to locate obvious problems and visible defects in the materials and building systems. If we have concerns about specific items, which may require additional investigation, we will notify you accordingly. Additionally, interviews with building staff and a review of Client provided documentation will be performed during the

site assessment. Review of documentation will include, but not be limited to, past and future capital improvement schedules, equipment replacement and equipment lists, ongoing equipment replacement proposals and costing, and as built or design drawings.

A brief description / condition of each of the systems listed below, along with observed deficiencies will be prepared for:

Site / Civil: The purpose of the Site Civil portion of the assessment is to observe and report on the general condition of site infrastructure and improvements which include the site utilities, site drainage, paving, sidewalks, site signage, lighting, and the landscaping. This will be accomplished by performing a review of the site. Site Civil drawings are requested to be provided for our reference in order to assist in understanding the systems that may affect the subject site. The types of materials, general conditions, major concerns and our repair recommendations will be included in the Report.

Structural: The purpose of the Structural portion of the assessment is to determine what general structural systems were used and their adequacy for the continued future current usage of the facility. We will perform a site walk-through to locate visible defects, which might suggest structural problems. The general soil conditions and local geology will be noted to provide opinion on potential problematic conditions in the area and observed localized issues will be noted.

Exterior Building Envelope: The purpose of the Exterior Building Envelope portion of the assessment is to visually review and assess the type and condition of materials used in construction of the exterior building envelope. Our observations will include visual review of exterior walls, windows, doors, caulk, trim, and siding for overall integrity of the systems and their ability to resist moisture infiltration. Our observations will be made from the ground or roof as appropriate and as can be safely performed. No facade drops will be performed as part of the base proposal.

Roofing: We will report on the in-place roofing system. We will visually assess its general condition based on site observations of the roofing membrane, flashing, penetrations and expansion joint details, and the general performance of the drainage system. No roof cores or testing will be conducted as part of the base FCA unless specifically agreed to. If reasonably accessible, the underside of the deck and a sampling of attic spaces will also be observed to determine if there is evidence of infiltration leakage. Steep-slope roofs will not be walked. Access to low-slope roofs must be provided or otherwise arranged by Client, including OSHA-approved portable ladders, as needed. No destructive testing will be performed as part of the base FCA.

Mechanical, Electrical, and Plumbing (MEP): The purpose of the MEP portion of the assessment is to view available MEP equipment, to note the type of systems used, to perform a review of the facility to observe the systems' present operation and to assess the general quality and condition of installation. Each building system will be evaluated based on condition, age, criticality, deficiencies, and remaining useful life of the aforementioned systems. No testing will be performed by CBRE. The services of a separate HVAC consultant are not included in this scope.

Interior Finishes: The purpose of the interior finishes portion of the assessment is to note finishes that are in place, assess the condition of the common area elements and the finishes within a percentage of the tenant spaces and comment on needed replacements and/or repairs that may be required.

Life Safety / Fire Protection Systems: The purpose of the Life Safety/Fire Prevention Systems Assessment will be to identify the systems that exist within the property. Fire alarms, sprinkler systems, fire extinguishers, smoke detectors, and emergency egress lighting and signage will be among the items we assess. We will identify third party fire or security alarm monitoring firms under contract, and inquire regarding the inspection history of these systems. Equipment will

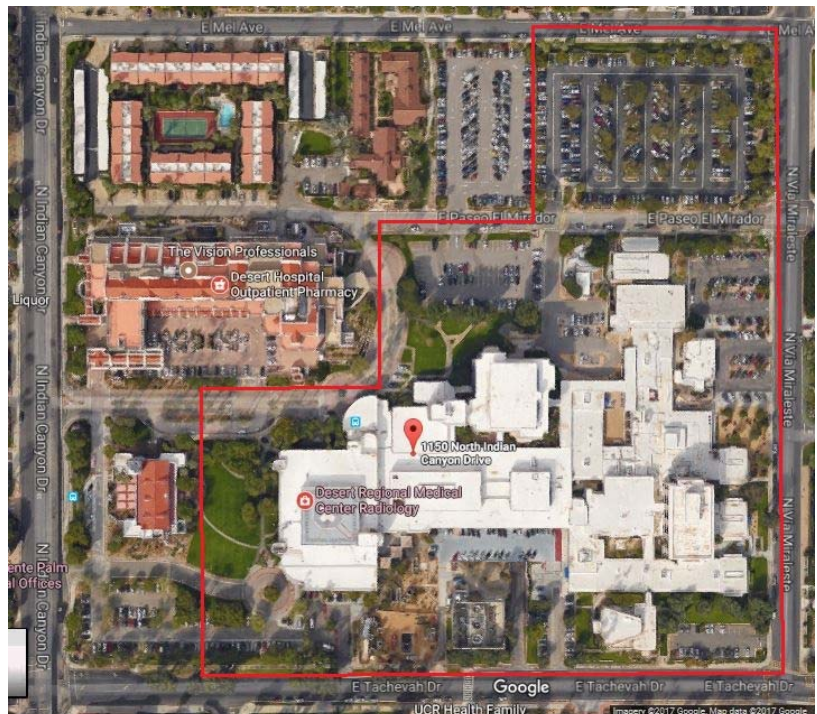
not be operated or tested by CBRE as part of this project. We will attempt to verify if the current systems comply with current code by way of interview of the local authority having jurisdiction (a general review of the property type with the local authority). The services of a separate fire protection consultant are not included in this scope.

Conveying Systems:

The focus here will be the vertical transportation systems including: inspection of elevators, lift systems to verify safety testing and inventory, audit of compliance documentation and service contracts, equipment type, manufacturer, age, condition, controller types, cab finishes, operations and timings.

Americans with Disabilities Act (ADA): The purpose of this assessment will be to confirm the accessibility of public areas of the site and buildings as defined by the American with Disabilities Act of 1990 (ADA). CBRE will prepare a Checklist ADA Survey that will note and comment on applicable and major path-of-travel items that may not be in compliance with Title III of the Americans with Disabilities Act. A visual survey of the Subject will be performed by the Generalist. A listing of deficient issues will be provided along with recommended cost to remediate the deficiencies. Photographs of building deficiencies will be included for illustration purposes.

PROPERTY FEE SCHEDULE				
BUILDING	ADDRESS	AREA	YEAR BUILT	FEE
Desert Regional Medical Center	1150 N Indian Canyon Drive Palm Springs, CA 92262	600,000		\$32,300.00



Proposal Specifications:

- Engagement via signing this Proposal.
- Consultant will schedule a site visit after the receipt of a signed copy of this Proposal.
- All travel related costs are included.
- A draft report will be delivered 15 business days after the site visit.
- Specific Contracted Purpose of Facility Condition Assessment: Capital Planning
 - Limited Narrative - Leve 2
 - Deficiency Costs & Photos
 - Capital Reserve Schedule - 10 Years, 3% Inflation Rate
 - Municipal Research
 - Flood Determination will be provided
- Representative Observations: 100% of accessible site, facades visible from grade, roof areas, plumbing systems, mechanical systems, electrical systems, fire suppression and alarms systems, conveying systems and 20% of the common areas
- This report is for internal use only. No third-party reliance without written consent of CBRE.
- The report(s) will be sent via electronic delivery. If needed, hard copies will be invoiced at \$50 per copy.
- The fee(s) and schedule expressed herein shall be honored by Consultant for a period of 14 business days from the date of this quotation.
- The fee for the above scope is based on a single site visit. If additional site visits are required due access issues or areas and systems which are not readily visible or available, additional fees will apply. Authorization for the additional effort will be required before a revisit can be performed.
- Lift access, and ladder access shall be provided by the onsite staff. We have not included the cost of lifts or ladders within the current scope.
- Any corporate safety procedures which will be required to comply with will need to be provided prior to the start of work. If required safety procedures materially impact the scope of work presented herein, the scope, pricing, and scheduling may need to be revised.
- **Cancellation:** Should the Client cancel the engagement, the Client will be charged project-specific costs incurred, such as regulatory database and non-recoverable travel fees, based on the percentage of the project completion at the time of cancellation.

Project Cancellation Stage	Billing Stage
Project cancelled at least 24 hours (1 business day) prior to onsite visit:	Expenses Incurred to date
Project cancelled <24 hours prior to onsite visit, during, or following completion of the onsite visit, but prior to draft report writing:	50% of project fee
Project cancelled after or during draft report writing, but prior to review/production:	80% of project fee
Project cancelled after or during draft report production:	100% of project fee

If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

FACILITY ASSESSMENT - CONSULTATIVE SOLUTIONS



Greg G. Souder, PE, MBA, LEED AP
Managing Director

Should this fee quotation, terms, and attached "Terms and Conditions" be acceptable, please sign below.

Accepted By:

Signature

Date

Print Name

Title

PROPERTY DATA REQUEST – ASSESSMENT & CONSULTING SERVICES

As part of our process you may have received, or will be receiving, Environmental and Property Condition Questionnaires to complete and forward back to CBRE. In addition to these questionnaires, please provide the following items in order to facilitate the assessment process:

1. All available construction documents (blueprints/plans) from the original/as-built construction of the building(s), or for any tenant improvement work or other recent construction work.
2. Site Plan, preferably 8 1/2" X 11", which depicts the arrangement of buildings, building units per building, roads, parking stalls, and other site features.
3. Copies of any available previous property/site assessments (e.g., Appraisals, Environmental Site Assessments, Property Condition Assessments, Geotechnical Reports, or Asbestos Surveys).
4. Copies of Certificates of Occupancy, building permits, fire or health department inspection reports, elevator inspection certificates, roof or HVAC warranties, and any other operating documents.
5. Copy of the properties listing prospectus information assembled by the real estate sales company, and any other brochures or marketing information.
6. A summary of recent (past 5 years) capital improvement work, which describes the scope of the work and the cost of the improvements.
7. Executed contracts or proposals for improvements. Include historical costs for improvements, replacements, and repairs.
8. ADA survey and status of improvements implemented.
9. Current/pending litigation related to environmental or property conditions.

TERMS AND CONDITIONS – ASSESSMENT & CONSULTING SERVICES

1. GENERAL. These Terms and Conditions together with any documents they are incorporated into either implicitly or by reference (collectively the "Agreement") constitute the entire contract between CBRE (hereinafter "Consultant") and the person or firm authorizing Consultant to proceed (hereinafter "Client"). The terms of this Agreement shall be governed by, subject to and construed in accordance with the laws of the state of New York. Agreement shall supersede any prior discussions, understandings or agreements between the Parties and may be authorized in parts and by signature, facsimile, e-mail or other similar method and such execution shall be binding on all Parties. No revisions to the Agreement or verbal commitment shall be binding on either Party unless documented and accepted in writing by all Parties.
2. ROLE OF CONSULTANT. Consultant, its specialists and vendors will act as independent contractors, will not be considered an employee of Client and will have no authority to act on behalf of Client.
3. SERVICES. The purpose and scope of Services to be provided under this Agreement are more detailed in proposal attached to these terms and conditions. The effective date of any report issued will be the date upon which the first draft report is issued by Consultant.
4. PERFORMANCE STANDARD. In performing the Services, Consultant shall exercise the degree of skill and care normally exercised by consultants in the same community providing the same or similar services for projects of comparable size, complexity, budget, schedule and other characteristics of the project (the "Standard of Care"). Except as set forth in the immediately preceding sentence, Consultant makes no warranties, express or implied, with respect to the Services or any of its oral or written reports. Client acknowledges and agrees that (i) the Services may require judgments to be made by Consultant that are based upon limited data rather than scientific certainties; (ii) Consultant's approach, recommendations, and associated cost estimates, if any, are based upon industry practices and averages; (iii) Consultant's opinions are made at the time of the assessment with respect to the observations made and data obtained at the time of the assessment; (iv) ultimate outcomes could be inconsistent with the conclusions, results, and projections of Consultant; and (v) there may be additional reports, records, work proposals, whether written, pending, or verbal, that may impact Consultant's findings, recommendations or cost estimates, if any.
5. LIMITATIONS OF SERVICES. The Services provided do not constitute the practice of architecture, engineering or geology. In no event shall Consultant be held liable for latent or hidden conditions, conditions not actually observed by Consultant or the potential consequences of conditions of which Client had knowledge at the time of the assessment. The walk-through will be limited to areas that are readily observable, easily accessible, and deemed safe by Consultant at the time of the site visit. Facades and pitched roof systems will be surveyed from grade or roof terraces, if any. Consultant's field observers do not wear special protective clothing or use protective equipment. Field observers will not enter crawl spaces or other confined areas that pose a health or safety risk that could result from the presence of mold, fungus, insects, vermin, protruding nails, etc. Additionally, if any ASTM standards are set forth in the Report, the Services are subject to the limitations detailed in the applicable ASTM standard. Consultant's opinions, whether oral or written, are not intended, nor should they be construed, as an insurance policy or a guarantee or warranty, expressed or implied, regarding the physical or environmental condition of the property and the property's compliance with local, state, or national building, structural, plumbing, or electrical codes; zoning ordinances, environmental/health regulations; or compliance with the Federal Fair Housing Act Accessibility (FHAA) Guidelines or the Americans with Disability Act (ADA). Client affirms an understanding of the scope and limitations of the Services and acknowledges the adequacy of the agreed upon scope of services for the purposes identified.
6. CLIENT INFORMATION. Client represents and warrants that, to the best of Client's knowledge, all information provided by Client is true, complete and accurate. Client shall defend, indemnify and hold Consultant harmless for claims arising from Client's failure to provide true, complete and accurate information to Consultant.
7. THIRD PARTY INFORMATION. Client acknowledges that Consultant may have relied on certain information provided by state and local officials and other public or private parties, contained within the files of agencies, within the reports or studies prepared by other consultants, which were provided to Consultant by Client, Client's agent, or property ownership/management, or provided directly to Consultant by property ownership, management or other representative. Client acknowledges that all such third party information is deemed by Consultant to be correct and complete without independent verification by Consultant. The thoroughness of Consultant's ALTA/ACSM Survey Review for compliance with Zoning Regulations was limited to the information provided in the survey itself.
8. CONSULTANT/CLIENT COMMUNICATION. It is understood that some municipalities will only release information to the property owner or authorized agent or in certain situations persons or entities that are located within the same municipality or state of the Subject. In these situations client will be notified immediately of the need for additional local support, which is to be provided by the Client or the Client's representative. Additionally, Client acknowledges that Consultant's ability to complete the MISR is dependent upon delivery of a current updated ALTA/ACSM Survey and timely responses from municipal agencies. At times the municipal agencies may be unable to provide written responses/ information within client required time frames. In these situations Consultant will endeavor to obtain required information verbally. In instances where the municipality is unable to provide information in hard copy or verbally Consultant will issue a draft report noting the outstanding information. Client agrees Consultant will not be held liable for any delays beyond the reasonable control of Consultant.
9. REPORTS AND WORK PRODUCT. All reports and work product developed (collectively "Reports") reflecting the Services provided are available for Client's use subject to the limitations of this Agreement. All Reports remain the property of Consultant and are subject to Consultant's document retention policies. Client shall not disseminate, distribute, make available or otherwise provide any Report to any third party (including without limitation, incorporating or referencing the Report, in whole or in part, in any offering or other material intended for review by other parties) except to (i) any third party service provider using the Report in the course of providing services for the sole benefit of Client, or (ii) as required by statute, government regulation, legal process, or judicial decree. In the event Client disseminates, distributes, makes available or otherwise provides any Report to any third party (including without limitation, incorporating or referencing the Report, in whole or in part, in any offering or other material intended for review by other parties), Client shall indemnify, defend and hold Consultant, its affiliates and their officers, directors, employees, contractors, agents and other representatives (Consultant and each of the foregoing an "Indemnified Party" and collectively the "Indemnified Parties") harmless from and against any losses, liabilities, damages and expenses in connection with (i) any transaction contemplated by this Agreement or in connection with the Report or the engagement of or performance of services by any Indemnified Party hereunder, (ii) any actual or alleged untrue statement of a material fact, or the actual or alleged failure to state a material fact necessary to make a statement not misleading in light of the circumstances under which it was made with respect to all information furnished to any Indemnified Party or made available to a prospective party to a transaction, or (iii) an actual or alleged violation of applicable law by Client (including, without limitation, securities laws) or the negligent or intentional acts or omissions of Client (including the failure to perform any duty imposed by law); and will reimburse each Indemnified Party for all reasonable fees and expenses (including fees and expenses of counsel) (collectively, "Expenses") as incurred in connection with investigating, preparing, pursuing or defending any threatened or pending claim, action, proceeding or investigation (collectively, "Proceedings") arising therefrom, and regardless of whether such Indemnified Party is a formal party to such Proceeding. Client agrees not to enter into any waiver, release or settlement of any Proceeding (whether or not any Indemnified Party is a formal party to such Proceeding) without the prior written consent of Consultant (which consent will not be unreasonably withheld or delayed) unless such waiver, release or settlement includes an unconditional release of each Indemnified Party from all liability arising out of such Proceeding.
10. RELIANCE. Services provided under this Agreement are for the sole use and benefit of the Client for the purpose identified in the incorporating documents. Except as specifically identified in the proposal attached hereto or the report produced under this agreement there are no third-party beneficiaries of the Services and no such party shall be entitled to rely on the Consultant's work product or shall have rights of recourse or recovery from the Client or Consultant under any theory of law whatsoever.
11. UNAVOIDABLE DELAYS. Should the completion of the Services be delayed or prevented for causes beyond Consultant's control and without fault of or negligence of Consultant, including lack of access, Client's or property ownership's failure to provide data or force majeure, the time for performance shall be extended for a period equal to the delay and all Parties shall agree on the terms and conditions upon which the Services may continue. Force majeure

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includes, but is not limited to, acts of God, acts or failures to act of federal, state or local government, war, epidemics, riots, quarantine restrictions, civil insurrections and severe weather.

12. FEES, INVOICING AND PAYMENT. Client agrees to pay Consultant the full amount identified in the Agreement or Work Order (hereinafter "Agreed Amount"). Unless otherwise specified in the Agreement, Consultant's fees shall be considered fully earned at the first issuance of a report, whether in draft or final form and will be invoiced at that time. Client agrees to pay the Agreed Amount within 30 days of the invoice date. Past due amounts are subject to a service charge the lesser of 1.5% per month or the maximum amount allowable by applicable law. All costs incurred in collecting past due amounts shall be paid by Client. In the event of dispute, Client agrees to pay all undisputed fees and will escrow the remainder of the Agreed Amount for disbursement upon resolution of the dispute. Any fees related to the escrow account are the sole responsibility of Client. Neither Client nor any permitted relying party shall have any rights under this Agreement, including rights to use or rely upon the report, until the Agreed Amount has been paid in full. Client's obligation to pay for the Services shall not be conditioned upon the completion of a transaction, ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies or Consultant's findings.
13. CONFIDENTIALITY. Information provided by or generated by either Party during the performance of the Services will be treated as confidential unless such information is publically available. Unless required by law, Consultant agrees to release information relating to services only to its employees and subcontractors in the performance of Services and to Client's authorized representatives. Unless informed to the contrary by Client, Consultant may use the name of Client in promotional material provided no property specific information is utilized.
14. LIMITATIONS OF LIABILITY. EXCEPT TO THE EXTENT ARISING FROM SECTION 9 ABOVE, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE TO THE OTHER, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES, AND AGGREGATE DAMAGES IN CONNECTION WITH THIS AGREEMENT FOR EITHER PARTY (EXCLUDING CLIENT'S OBLIGATION TO PAY THE FEES HEREUNDER) SHALL NOT EXCEED THE TOTAL FEES PAYABLE TO CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. THIS LIABILITY LIMITATION SHALL NOT APPLY IN THE EVENT OF A FINAL FINDING BY AN ARBITRATOR OR A COURT OF COMPETENT JURISDICTION THAT SUCH LIABILITY IS THE RESULT OF A PARTY'S FRAUD OR WILLFUL MISCONDUCT.
15. SAMPLING. When Services include the collection and analysis of samples, the Consultant shall act as bailee and shall not assume title to the samples collected. Unless otherwise stated in this Agreement, samples will be discarded immediately following analysis. Client is responsible for any costs associated with the disposal of any samples or wastes generated during the collection of the samples.
16. PROJECT SITE. Client acknowledges that the performance of Services may cause alteration or damage the property and/or building structures at the site. Consultant will exercise reasonable efforts to limit such alteration or damage, but shall have no responsibility for their restoration or repair. Prior to any site visit, Client agrees to disclose the identity of all utilities serving the property and the presence and location of hidden objects or potentially hazards known to Client relative to any areas Services are to be provided.
17. SAFETY. Consultant shall take all safety precautions required by federal, state and local laws, rules and regulations. Should Consultant be conducting Services on a property, Consultant shall not be responsible for the safety and have no rights or responsibility to direct or stop the work of Client's or property ownerships contractors, agents or employees.
18. TERMINATION. The Consultant's obligation to complete the Services may be terminated at any time by mutual consent or by written notice from either party. In the event of termination prior to completion of the Services by Client, for any reason, or Consultant, due to the breach of this Agreement by Client, Consultant reserves the right to complete such analyses and records as are necessary to place its files in order and, where considered by consultant as necessary to protect its professional reputation, to complete a report on Services performed to date. Client shall pay Consultant for all Services rendered. All other provisions of this Agreement shall survive termination.
19. RESPONDING TO SUBPOENA OR OTHER JUDICIAL COMMAND TO PRODUCE DOCUMENTS. If Consultant receives a subpoena or other judicial command to produce documents or to provide testimony involving this assignment in connection with a lawsuit or proceeding, Consultant will use reasonable efforts to notify Client of our receipt of same. If Consultant is not a party to these proceedings, Client agrees to compensate Consultant for its professional time and reimburse Consultant for the actual expenses that Consultant incurs in responding to any subpoena or judicial command, including attorneys' fees, if any, as they are incurred. Consultant will be compensated at the then prevailing hourly rates of personnel responding to the subpoena or judicial command for testimony.
20. HIRING OF EMPLOYEES. Client, including its principals, and any parent, subsidiary, or affiliated companies, jointly and severally, agrees that during the term of this Agreement, or within 18 months following the termination of this Agreement, it will not hire any of Consultant's employees or persons employed by Consultant during the term thereof. In the event that Client shall breach any obligation contained in this paragraph, Client shall be liable for, and shall pay Consultant on demand, damages of twenty thousand dollars (\$20,000) for each employee so hired, it being mutually agreed by Client and Consultant that this provision for liquidated damages is reasonable and that the actual damage which would be sustained by Consultant as a result of the failure to comply with this provision would be impractical or extremely difficult to determine.
21. DISPUTE RESOLUTION. Notification of any controversy, claim, counter claim, action of dispute (collectively "Dispute") in connection with this Agreement or Services hereunder must be provided to all Parties to this Agreement within sixty (60) days of discovery of the condition giving rise to the Dispute. All parties agree to first seek amicable resolution of any Dispute, during which process any Party seeking recovery must submit an orderly and detailed description of alleged damages and each act, error or omission giving rise to such damages. If the dispute is unresolved within 90 days of the notice, either party may suggest informal mediation by a neutral mutually acceptable to the parties, with costs borne equally. Any Dispute which is unresolved after 150 days following the submission of this information may be resolved through legal action in the state of New York. Each Party shall be responsible for and shall pay for all costs connected with preparation and presentation of its position unless it is determined that a Party has initiated a recovery action on a basis inconsistent with the provisions of this Agreement. In such a case, the initiating Party shall, without exception, be assessed all costs incurred by the responding party. All Parties hereby waive trial by jury in any dispute arising out of or in any way connected with this Agreement and the Services provided. This waiver is made knowingly and voluntarily by the Parties hereto. In the event an insurable event arises, the parties agree to allow their respective insurance companies to evaluate and process the claim in accordance with the terms of this Agreement and the normal operating procedure, without circumventing or interference from the other party.
22. TIME PERIOD FOR LEGAL ACTIONS. Unless the time period is shorter under applicable law, except in connection with Section 9 above, Consultant and Client agree that any legal action or lawsuit by one party against the other party or its affiliates, officers, directors, employees, contractors, agents or other representatives, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, relating to (a) this Agreement or any Report, (b) any Services under this Agreement or (c) any acts or conduct relating to such Services, shall be filed within two (2) years from the earlier of the date of Consultant's inspection of the property that is the subject of the Report and the date of the Report. The time period stated in this section shall not be extended by any incapacity of a party or any delay in the discovery or accrual of the underlying claims, causes of action or damages.
23. CAPTIONS AND HEADINGS. The captions and headings used throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be deemed to define, limit, describe, modify or add to the interpretation, construction or meaning of any provision, scope or intent of the Agreement.
24. SEVERABILITY. If any provision of this Agreement, or application thereof to any person or circumstance, shall to any extent be invalid, then such provision shall be modified if possible to fulfill the intent of the Parties reflected in the original provision. The remainder of this Agreement, or the application of such provision to person or circumstance other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
25. ASSIGNABILITY. No Party to this Agreement shall assign their rights under this Agreement to any third party without the prior written consent of the other Party.

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26. NO WAIVER. No waiver by either Party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.
27. MISCELLANEOUS. Each Party, and the person executing on behalf of such Party, represent and warrant that they have the full power and authority to bind the Party represented. In the event of conflict between these terms and conditions and the provisions of any work order or other document, these terms and conditions shall control unless the conflicting document expressly supersedes specific provisions hereof. Each party to this Agreement affirms that it has read and understands the Agreement in full and has been advised by counsel as necessary or appropriate.
28. NO LIABILITY FOR DRAFT REPORTS. Consultant shall have no liability whatsoever for reports or deliverables that are submitted in draft form.
29. ADDITIONAL REPORT COPIES. Additional copies of the reports can be provided at \$50 per copy.