

RE: [Property Address]
Proposal No.

TERMS & CONDITIONS

CONSULTANT shall perform its Services subject to the attached "Terms & Conditions", which are incorporated by reference and made a part of this Proposal. Please indicate your acceptance of this Proposal by signing the attached "Acceptance & Authorization" page where indicated, and return it to me at the address set forth below.

This Proposal shall be valid for five (5) business days from the date of this letter.

Please feel free to contact me should you have any questions.

Sincerely,

Name & Title

Attachments:

Description of Services

Terms & Conditions

Acceptance & Authorization

TERMS & CONDITIONS

1. Billings, Payment and Credit. The Client shall pay CONSULTANT for the Services performed in accordance with the prices set forth in the Proposal. Invoices shall be submitted in accordance with the Proposal. Payment of the CONSULTANT invoices shall be the primary, absolute and non-contingent obligation of the Client, and shall not be conditioned upon the closing of a loan transaction or any other event. **PAYMENT IS DUE UPON RECEIPT.** If CONSULTANT does not receive payment in full within thirty (30) calendar days of the date of the invoice, the account shall be deemed delinquent. Unpaid delinquent balances shall bear interest from the invoice date at one and one-half percent (1.5%) per month, or at the maximum lawful interest rate (whichever rate is less).

The Client shall be liable to CONSULTANT for all costs and expenses of collection of delinquent balances, including reasonable attorney and other fees, and court costs. Time is of the essence with respect to this provision. CONSULTANT's non-exercise of any rights or remedies, whether specified herein or as otherwise provided by law, shall not be deemed a waiver of any rights or remedies, nor preclude CONSULTANT from the future exercise of such rights or remedies. If a third party is accepting a Proposal as agent for the Client, such third party represents and warrants to CONSULTANT that it is legally authorized to bind the Client to the terms of the Proposal and guarantees payment for services.

2. Right of Entry; Force Majeure. The Client shall arrange for the right of entry to the subject property ("Site") by CONSULTANT, its agents, employees, consultants, contractors and subcontractors, for the purpose of performing all acts as may be reasonably necessary to complete the Services within the agreed scope of work. CONSULTANT may require that an authorized, knowledgeable representative of the Site owner be present at the Site as a condition of the performance of the Services and may require that site personnel operate major building systems and equipment at the time the Services are performed. CONSULTANT's ability to comply with the schedule for performance described in the Proposal is contingent upon timely and complete Site access. CONSULTANT shall not be responsible for damages or delays in performance caused by force majeure, acts of God, events beyond the control of CONSULTANT, or events that could not have been reasonably foreseen and prevented.
3. Documents; Samples. All field notes, calculations, estimates and other documents, data or information prepared by or on behalf of CONSULTANT in connection with the performance of its Service (collectively, "Documents"), shall remain the sole property of CONSULTANT. All Documents prepared by CONSULTANT for the Client with respect to any Site shall be used solely for the intended purposes described in the Proposal, and solely with respect to the subject Site. Unless otherwise agreed, CONSULTANT shall retain all Documents for three (3) years following submission of CONSULTANT's report to the Client. In its sole discretion and without prior notice to the Client, CONSULTANT may dispose of all field samples within thirty (30) calendar days after submission of CONSULTANT's report to the Client.
4. Matters Known to Client. The Client, itself or through the Site owner, shall provide CONSULTANT with any and all information known to the Client, or suspected by the Client, which pertains to: (a) the existence or possible existence at, on, under or in the vicinity of the Site, any hazardous materials, pollutants, lead-based paint, radon or asbestos; (b) any conditions at, on, under or in the vicinity of the Site, which might represent a potential safety hazard or danger to human health or the environment; (c) any permit, manifest, title record, or other record of compliance or non-compliance with any federal, state or local laws, or court or administrative order or decrees; (d) any known or suspected deficiencies or adverse conditions associated with structures or other physical improvements on Site; or (e) any modifications or changes from the original plans and specifications of Site improvements which could affect the recommendations or conclusions reached by CONSULTANT in the performance of its Services.
5. Preliminary Findings. Preliminary findings (often referred to as "verbals") can be provided to the client in order to quickly apprise them of **preliminary** data obtained as a result of CONSULTANT's visual observations at the project site. They are not intended to be exhaustive or conclusive or to substitute for the final written report, as they do not include information obtained from a number of other important and necessary components of the overall assessment. CONSULTANT recommends against making any decisions based upon such limited, preliminary, verbal information.

6. **PERFORMANCE STANDARDS.** 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 WARRANTY, 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 UPON SCIENTIFIC CERTAINTIES; (II) CONSULTANT'S APPROACH, RECOMMENDATIONS, AND ASSOCIATED COST ESTIMATES, IF ANY, ARE BASED ON INDUSTRY PRACTICES AND AVERAGES; (III) PROFESSIONAL OPINIONS ARE RENDERED WITH RESPECT TO OBSERVATIONS MADE AND DATA OBTAINED AT THE TIME OF ASSESSMENT; AND (IV) ULTIMATE OUTCOMES COULD BE INCONSISTENT WITH THE CONCLUSIONS, RESULTS AND PROJECTIONS OF CONSULTANT. ALL INFORMATION REGARDING OPERATIONS, PLANS, SPECIFICATIONS, CONDITIONS OR OTHER DATA WHICH IS PROVIDED TO CONSULTANT BY CLIENT, OWNERS OR THIRD PARTIES (INCLUDING WITHOUT LIMITATION, ANY POINT OF CONTACT AT THE SITE), IS DEEMED BY CONSULTANT TO BE CORRECT AND COMPLETE WITHOUT INDEPENDENT VERIFICATION. CONSULTANT ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION AND SHALL NOT BE LIABLE IF RELIANCE ON SUCH INFORMATION RESULTS IN INCORRECT CONCLUSIONS OR RESULTS.
7. **INDEMNIFICATION AND LIMITATION OF LIABILITY.** CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS (BUT NOT DEFEND) CLIENT, ITS DIRECTORS, OFFICERS AND EMPLOYEES AGAINST ANY LOSSES, LIABILITY, DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES AND DEFENSE COSTS ARISING FROM CLAIMS BY THIRD PARTIES, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF CONSULTANT, ITS EMPLOYEES, SUBCONTRACTORS OR ANYONE FOR WHOM CONSULTANT IS LEGALLY LIABLE, IN THE PERFORMANCE OF SERVICES HEREUNDER. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR LATENT OR HIDDEN CONDITIONS, CONDITIONS NOT ACTUALLY OBSERVED BY CONSULTANT WITHIN THE LIMITED SCOPE OF WORK, THE POTENTIAL CONSEQUENCES OF OBSERVABLE CONDITIONS, CONDITIONS OF WHICH CLIENT HAD KNOWLEDGE OF AT THE TIME OF THE ASSESSMENT, OR ANY UNAUTHORIZED ASSIGNMENT OF OR RELIANCE UPON THE REPORTS. THE LIABILITY OF CONSULTANT, AND THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONTRACTORS, TO CLIENT OR TO ANY THIRD PARTY CLAIMING BY OR THROUGH CLIENT, INCLUDING ANY COMPANY AFFILIATED WITH CLIENT, OR ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, SUBCONTRACTOR, SUCCESSOR, OR ASSIGN OF SUCH PARTIES, FOR ANY LOSSES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), RELATED TO THE SERVICES, THE AGREEMENT OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE SUM OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). IN NO EVENT SHALL CONSULTANT BE LIABLE TO CLIENT FOR ANY EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING FROM OR IN ANY WAY CONNECTED WITH ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THE AGREEMENT, EVEN IF THE AFFECTED PARTY HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.
8. Dispute Resolution. Any claim, dispute or controversy arising out of or related to this Agreement which cannot be resolved amicable between senior officials of the parties, shall be resolved through the following method of binding dispute resolution:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction in accordance with this Agreement.)

(Check one.)

Arbitration in accordance with the Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration.

Litigation in a court of competent jurisdiction determined in accordance with this Agreement.

THE CLIENT AND CONSULTANT HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES OR THIS AGREEMENT.

9. **RELIANCE AND ASSIGNMENT.** CONSULTANT'S WRITTEN REPORT SHALL CONTAIN CONSULTANT'S STANDARD RELIANCE LANGUAGE UNLESS ALTERNATE LANGUAGE HAS BEEN PRE-APPROVED BY CONSULTANT. IF NO PRE-APPROVED ALTERNATE LANGUAGE EXISTS, THE SERVICES, THE REPORTS AND OTHER RELATED WORK PRODUCT PROVIDED BY CONSULTANT MAY BE RELIED UPON BY THE CLIENT, ITS SUCCESSORS AND ASSIGNS WITH RESPECT TO A LOAN SECURED BY THE SUBJECT PROPERTY, AND ANY RATING AGENCY RATING, OR ANY ISSUER OR PURCHASER OF, ANY SECURITY COLLATERALIZED OR OTHERWISE BACKED BY SUCH LOAN. NO OTHER PERSON OR ENTITY MAY RELY ON THE REPORT WITHOUT THE ADVANCE WRITTEN CONSENT OF CONSULTANT, AND NO OTHER THIRD PARTY BENEFICIARIES ARE INTENDED. EXCEPT AS DESCRIBED ABOVE, THE CLIENT SHALL NOT ASSIGN THE PROPOSAL, ANY REPORT OR ANY RELATED WORK PRODUCT, WITHOUT THE PRIOR WRITTEN CONSENT OF CONSULTANT. ANY UNAUTHORIZED REUSE OR REDISTRIBUTION OF CONSULTANT'S WORK PRODUCT OR REPORTS SHALL BE AT THE CLIENT'S AND RECIPIENT'S SOLE RISK, WITHOUT LIABILITY TO CONSULTANT. CLIENT WILL HOLD CONSULTANT HARMLESS FROM ANY AND ALL LIABILITY, OBLIGATION, COST AND EXPENSE ARISING FROM OR RELATED TO ANY UNAUTHORIZED DISTRIBUTION OR USE BY CLIENT OF CONSULTANT'S WORK PRODUCT OR REPORTS. CONSULTANT SHALL NOT ASSIGN ITS OBLIGATIONS UNDER THE PROPOSAL; HOWEVER, CONSULTANT MAY EMPLOY, BY SUBCONTRACT, SUITABLY TRAINED PERSONS OR ENTITIES ACCEPTABLE TO CONSULTANT TO PERFORM THE SERVICES.
10. **Confidentiality.** CONSULTANT shall not disclose information regarding the Proposal, the Services or any Documents, except to the Client, employees, consultants, subcontractors, or other persons engaged by CONSULTANT to perform the Services, third parties designated by the Client (subject to the reliance limitations described herein), or as required by law. Notwithstanding the terms of this Section, CONSULTANT shall comply with all judicial orders, government directives, and laws, regulations and ordinances, regarding the reporting to appropriate public agencies of potential dangers to public health, safety or the environment. .
11. **Miscellaneous.** CONSULTANT is an independent contractor of Client, and not Client's agent, employee or partner. The Agreement shall be governed by the laws of the State of _____ and the parties irrevocably consent to the jurisdiction of the courts of the State of _____ and of the United States District Court for the District of _____, if a basis for federal jurisdiction exists. In the event a dispute relating to a CONSULTANT report results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred by CONSULTANT in the defense of the claim, including reasonable attorney's fees. Each provision of the Agreement shall be considered separable, and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not affect those portions of this Agreement that are valid. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the Services to be provided pursuant to this Agreement. The provisions of the Agreement may only be modified by a written instrument signed by an authorized representative of each party.

ACCEPTANCE AND AUTHORIZATION

To contract with CONSULTANT for this project, please review and edit the information below, sign, and return to CONSULTANT.

Contact: _____ **Phone:** _____
Fax: _____
Email: _____

Project Information:

Property Name: _____
Address: _____
City: _____ **State:** _____
Zip Code: _____ **County:** _____

Building Information:

Type of Project: _____ **% Occupied:** _____
Square Feet: _____ **Units:** _____ **Land Area:** _____
Buildings: _____ **Stories:** _____ **Year Built:** _____
Built in Phases: _____ **Year(s) of Phases:** _____

Reason for Service: _____ **Lender:** _____
Length of Reserve: _____ **Term of Loan:** _____

Report Due Date: _____

Service(s)	Related Protocol(s)	Fee(s)

# of Reports	Report Type	Delivery Method

Address reports to:

Send Bill & Reports to:

Primary Points of Contact*:

Key Site Manager (KSM): _____ KSM Phone: _____
KSM Fax: _____ KSM - E-mail: _____
KSM Property Affiliation (e.g. Broker, Property Manager, etc.) _____

Owner Entity Contact: _____ Owner E-mail: _____
Contact _____
Owner Phone: _____

* The Client acknowledges the Point of Contact provided shall be deemed an agent of the Client for the purposes of providing access and conveying information pertaining to the Site.

I have read and verified the accuracy of the information set forth above, and in Proposal No. _____, including the legal name of the Client. I hereby certify that I am an employee authorized to sign this contract on behalf of the Client, and by my signature below I hereby accept the Proposal, as addressed to my company, **including the attached Terms and Conditions**, and authorize CONSULTANT to proceed with the Services as described herein. Should any project information change, I understand that additional fees may accrue and the due date may be extended.

Authorized Signature (Printed Name) Phone #

Company Name Title Date