

RESOLUTION 2015-38

**A RESOLUTION AUTHORIZING A CONTRACT WITH THELEN ASSOCIATES, INC.
FOR TEST BORINGS AND DISPENSING WITH THE SECOND READING**

WHEREAS, in order to provide for safe roads in Sycamore Township, the Board of Township Trustees is making improvements to Galbraith and Montgomery Roads by placing utilities underground (the "Galbraith/Montgomery Underground Utility Project"); and

WHEREAS, the Board of Township Trustees desires to contract with Thelen Associates, Inc. for geotechnical test borings in the area of the Galbraith/Montgomery Underground Utility Project;

NOW THEREFORE, BE IT RESOLVED by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1. The attached proposal from Thelen Associates, Inc. for geotechnical test borings for the Galbraith/Montgomery Underground Utility Project is hereby approved and the Township Administrator is authorized and approved to execute the proposal on behalf of the Board

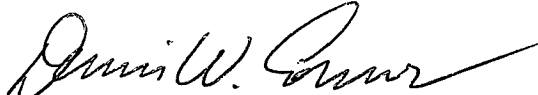
SECTION 2. The Board of Township Trustees of Sycamore Township, by at least two-third vote of all of its members, dispenses with any requirement that this Resolution be read on two separate days and authorizes its passage upon one reading.

SECTION 3. This Resolution shall take effect on the earliest date allowed by law.

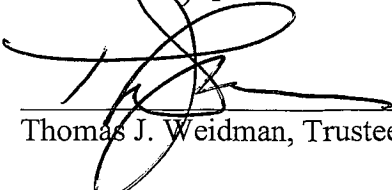
VOTE RECORD:

Mr. Bishop AYE Mr. Connor AYE Mr. Weidman AYE

PASSED at the meeting of the Board of Trustees this 31st day of March, 2015.

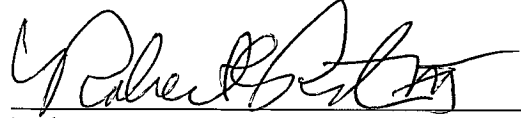

Dennis W. Connor, President


Cliff W. Bishop, Vice President


Thomas J. Weidman, Trustee

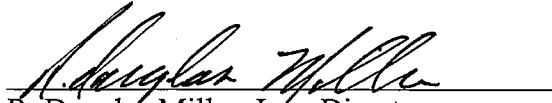
AUTHENTICATION

This is to certify that this Resolution was duly passed and filed with the Sycamore Township Fiscal Officer, this 31st day of March, 2015.



Robert C. Porter, III
Sycamore Township Fiscal Officer

APPROVED AS TO FORM:


R. Douglas Miller, Law Director



THELEN ASSOCIATES, INC.

Geotechnical • Testing Engineers

• 1780 Carillon Boulevard, Cincinnati, Ohio 45240-2795 / 513-825-4350 / Fax 513-825-4756

www.thelenassoc.com

Offices

Erlanger, Kentucky
Lexington, Kentucky
Cincinnati, Ohio
Dayton, Ohio

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March 25, 2015

Sycamore Township
8540 Kenwood Road
Sycamore Township, OH 45236

Attention: Mr. Tracy Kellums

Re: Proposal Agreement N150219
Test Borings
Galbraith & Montgomery Road
Underground Utility
Sycamore Township, Ohio

Ladies and Gentlemen:

Pursuant to the request of Mr. James L. Elliot, Brandstetter Carroll, Inc., we are pleased to submit to you this Proposal-Agreement for completing test borings for the proposed Galbraith & Montgomery Road underground utility project, Sycamore Township, Ohio.

The main purpose of our services is to determine the general subsurface profile at the site. Based upon our experience as Geotechnical Engineers and as requested by Brandstetter Carroll, Inc., we propose a scope of services including the following:

1. Perform two (2) test borings, each approximately 16.5 feet in depth. Thelen will field stake test boring locations. This Proposal-Agreement is based upon the Client contracting directly with Brandstetter Carroll, Inc. to obtain the as-drilled test boring locations and ground surface elevations within one (1) week after drilling work is completed.
2. Perform field tests for use in evaluating classification, strength and compressibility parameters of the subsurface soils and/or bedrock.

3. Make an engineering evaluation of the accumulated data and prepare engineered test boring logs and a written summary of findings.
4. Distribute reports electronically in pdf format to Sycamore Township and Brandstetter Carroll, Inc.

Should we discover unusual or erratic subsurface conditions, we will contact you to discuss any necessary changes prior to expanding the scope of work.

The details of our services are outlined on the fee schedule shown on the accompanying Proposal-Agreement form. Our services include contacting Ohio Utilities Protection Service in order for them to provide utility clearance. This cost does not provide for repair of lawns, ground, vegetation and/or paving disturbed during the drilling operations. We will backfill the test boring holes with a specialty material and perform a reasonable job of clean up.

With our present work schedule, this work could commence within seven to ten (7 to 10) working days after receipt of authorization to proceed and after the test boring locations are staked in the field, weather and site conditions permitting. Our work will be performed in a timely manner consistent with sound engineering practices. Normally an allowance of three to four (3 to 4) weeks following completion of field work is allotted for submittal of the geotechnical study.

Samples obtained from the test borings will be retained for a period of thirty (30) days after submittal of our geotechnical report. Continued storage or other disposition of samples can be made at your expense upon written request.

The scope of our geotechnical engineering services does not include any environmental assessment or investigation for the presence or absence of wetlands or hazardous or toxic materials in the soil, bedrock, surface water, groundwater or air, on or below or around the site. Any restrictions or requirements imposed by governmental agencies or

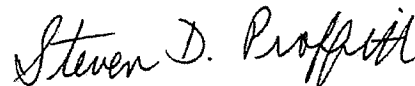
others with regard to site clearing, access limitations or restoration is to be considered beyond the scope of this Proposal.

If this Proposal-Agreement meets with your approval, please sign the Proposal-Agreement form and return a signed copy to serve as our authorization to proceed. If you issue a Purchase Order, please reference this Proposal-Agreement. If you provide verbal or another form of authorization to proceed, it is understood that you are in agreement with all of the terms and conditions of this Proposal-Agreement and our services will be provided based on that understanding.

Enclosed herewith is a reprint of "Important Information about Your Geotechnical Engineering Proposal" published by ASFE/GBA, The Geoprofessional Business Association, which our firm would like to introduce to you at this time.

We thank you for this opportunity to provide our fee schedule and estimate of the costs of the proposed geotechnical services. We look forward to being your Geotechnical Consultants for the referenced project. If you have any questions concerning the enclosed information, or if we may be of any other service to you, please do not hesitate to contact us.

Respectfully submitted,
THELEN ASSOCIATES, INC.



Steven D. Proffitt
Senior Business Development Associate

SDP:alp

Enclosure: ASFE/GBA Information

cc: Mr. James L. Elliott, Brandstetter Carroll, Inc.

GENERAL CONDITIONS

To assure a clear understanding of all matters related to our mutual responsibilities, the following conditions for the technical services by Thelen Associates, Inc., hereinafter called Thelen, are made a part of this proposal-agreement.

- 1) Without the Client's authorization, the fee schedule rates shall be held fixed until sixty (60) calendar days after the date of this proposal-agreement.
- 2) The Client will be invoiced for services rendered, payable upon receipt, unless otherwise agreed. The Client shall pay an additional charge of one-and-one-half percent (1.5%) of the invoiced amount per month for any payment not received by Thelen within thirty (30) calendar days of date of invoice. The Client shall pay any attorney's fees or other costs incurred by Thelen to collect any delinquent amount.
- 3) The Client shall place at the disposal of Thelen all available information pertinent to the project site including boundary, topographic, and utility surveys, probing and subsurface exploration reports, field and laboratory tests, schematic layouts, sketches, cross sections, site plans, the known or possible presence of hazardous materials, and any other information pertinent to the existing and proposed conditions upon which Thelen can rely as background data in completing the technical and/or professional services under this proposal-agreement. ~~The Client agrees to waive any claim against Thelen, and to defend and hold Thelen harmless from any claim or liability for injury or loss allegedly arising from Thelen damaging underground utilities or other man-made objects that were not properly located on plans furnished to Thelen. Client further agrees to compensate Thelen for any time spent or expenses incurred by Thelen in defense of any such claims, in accordance with Thelen's prevailing fee schedule and expense reimbursement policy.~~

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- 4) The Client shall guarantee ingress and egress upon public and private lands and shall obtain approval of all governmental authorities as required for Thelen or its agents to perform its work under this proposal-agreement.
- 5) The Client understands that Thelen's services under this proposal-agreement are limited to geotechnical services and do not include any environmental investigation or assessment, and that Thelen has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with hazardous materials, including notifying any governmental body or the potentially affected public. The existence or discovery of hazardous materials constitutes a changed condition under this proposal-agreement.
- 6) In subsurface explorations and materials testing, the actual conditions or characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations and explorations have been made or testing performed. Because of these uncertainties, changed or unanticipated conditions may occur that could affect the Client's estimated or actual costs, for which Thelen is not responsible. If Thelen discovers such conditions or circumstances that it had not anticipated, Thelen will notify the Client in writing of any such changed conditions. The Client and Thelen agree that they will then negotiate in good faith the terms and conditions of this proposal-agreement. If Thelen and the Client cannot agree upon amended terms and conditions within thirty (30) calendar days after notice, Thelen may terminate this proposal-agreement and be compensated for its work in progress.
- 7) The Client recognizes that he is solely responsible for the selection of the general contractor, subcontractors, sub-subcontractors, materialmen and others (herein collectively the Contractor), and that Thelen is not responsible for the construction means, methods, techniques, sequences or procedures incidental to the Contractor's work, nor for the Contractor's obligations for project site safety matters, safety programs and measures, including but not limited to Occupational Safety and Health Act (OSHA) regulations, nor is Thelen liable for defects or deficiencies in the Contractor's work. Thelen will be available for consultation if Client believes the Contractor's work is deficient in any manner.
- 8) The Client shall give prompt written notice to Thelen whenever the Client observes or otherwise becomes aware of any defect in the project. The Client and Client's personnel, Contractors and Subcontractors shall promptly report to Thelen any defects or suspected defects in Thelen's work in order that Thelen may take prompt, effective measures which in Thelen's opinion will minimize the consequences of a defect in service.
- 9) If retained as the Client's representative for construction review services, Thelen will provide technical and/or professional personnel who will make observations and run field tests as the Geotechnical Engineer deems necessary, and thereby provide an opinion as to whether the Contractor's work is proceeding in accordance with the project specifications. On the basis of Thelen's on-site observations and tests, Thelen will assist the Client in assessing the progress of the Contractor's work. Thelen cannot guarantee against defects and deficiencies in the work of the Contractor occurring in Thelen's absence from the site.

Continued

GENERAL CONDITIONS, Continued

- 3-25-15
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- 10) All documents, including reports, logs, drawings, field notes, laboratory test data, calculations, estimates and other documents prepared by Thelen as instruments of service shall remain the property of Thelen. The Client agrees that the Client and his agents will use these documents solely in connection with the project, and not for the purpose of making subsequent extensions or enlargements thereto, and he will not sell, publish or display them publicly. Re-use for extensions of the project, or for new projects, shall require written permission of Thelen and shall entitle Thelen to further compensation at a rate to be agreed upon by the Client and Thelen. Thelen retains the rights of ownership of any patentable or copyrightable concepts arising from Thelen's services.
- 11) Thelen makes no warranty, either expressed or implied, as to its findings, recommendations, specifications, drawings or professional advice, except that the same will be promulgated after being prepared in accordance with the generally accepted professional engineering principles and practices in the field of civil engineering at this time, including but not limited to geotechnical engineering and materials testing. Thelen's services will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Thelen will perform its professional services in a manner consistent with sound engineering practices.
- 12) All legal action by either party against the other for breach of this proposal-agreement or any addendum to it, or for failure to perform in accordance with the applicable standard of care, or that is essentially based upon such breach or such failure, shall be barred by the applicable statute of limitations. Such action shall be deemed to have accrued in any and all events not later than the date of Thelen's last services provided under this proposal-agreement, and as to any alleged acts or failures to act occurring after the date of Thelen's last services, not later than the date of Thelen's final invoice for services.
- 13) Thelen shall secure and maintain such insurance as will protect it from claims under the Worker's Compensation Acts and from claims for bodily injury, death or property damage which may arise from the performance of its work under this proposal-agreement.
- 14) Neither the Client nor Thelen will be liable to the other for any special or consequential damages of the other party, and/or its customers, including but not limited to losses, damages or claims related to the unavailability of property or facilities, construction delays, penalties, shutdowns, service interruptions, cost of capital, or loss of use, profits or revenue.
- 15) The Client and Thelen mutually agree that Thelen's total cumulative liability to the Client arising from services under this proposal-agreement will not exceed the gross compensation received by Thelen under this proposal-agreement or \$50,000, whichever is greater. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in Thelen's services, whether alleged to arise in tort, contract, warranty, strict liability, statutory liability, or other legal theory. Upon the Client's written request, Thelen and the Client may agree to increase the limitation of Thelen's liability to a greater amount in exchange for a negotiated increase in Thelen's fee.
- 16) ~~The Client shall hold harmless, indemnify and defend Thelen, its officers, employees and agents, from any and all liability claims, losses or damage, including reasonable legal fees, arising or alleged to arise from the performance of the services described in the proposal-agreement, unless said claims, losses or damage are caused by the negligence of Thelen, its officers, employees and agents.~~ This proposal-agreement shall not create any rights or benefits to parties other than the Client and Thelen, except such other rights as may be specifically called for herein.
- 3-25-15
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- 17) All claims, disputes or controversies arising out of, or in relation to, the interpretation, application or enforcement of this agreement, other than claims for payment of Thelen's services in Paragraph 2 above, shall be decided through Mediation. Mediation shall be conducted as follows:
- in the event of any claims, disputes or other matters in question between the parties to this proposal-agreement, the parties agree first to try in good faith to settle the dispute by mediation to be conducted, if reasonably possible, by the Center for Resolution of Disputes in Cincinnati, Ohio; and
 - the Client and Thelen agree to use best efforts to reach a mediated settlement and agree to voluntarily exchange requested information and documents and provide witness interviews as requested.
- 3-25-15
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- ~~The parties further agree that the Client will require, as a condition for participation in the project and their agreement to perform labor or services, that all Contractors, Subcontractors, Sub-subcontractors and Materialmen, whose portion of the work amounts to five thousand dollars (\$5,000) or more, and their insurers and sureties, shall agree to this procedure. If the Client fails to abide by this provision, the Client agrees to defend, indemnify and hold Thelen harmless from any claim or liability or injury or loss allegedly arising from Thelen's failure to perform in accordance with the applicable standard of care.~~



THELEN ASSOCIATES, INC.

Geotechnical • Testing Engineers

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Offices

Erlanger, Kentucky
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Cincinnati, Ohio
Dayton, Ohio

PROPOSAL • AGREEMENT FORM

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Date: March 25, 2015

Page 6 of 7

Client: Sycamore Township
8540 Kenwood Road
Sycamore Township, OH 45236

Attention: Mr. Tracy Kellums

Project: Test Borings, N150219
Galbraith & Montgomery Road Underground Utility
Sycamore Township, Ohio

It is hereby mutually agreed by and between Thelen Associates, Inc., Geotechnical Engineers, hereinafter called Thelen, and the aforementioned Client, that Thelen shall furnish the following technical and/or professional services for payment by the Client in accordance with the **17 general conditions (see previous pages)** and the fee schedule contained herein:

<u>ITEM</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>DESCRIPTION</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
121A	8	Hour	Drill Crew and Track -Mounted Drill Rig to Perform Two (2) Soil Test Borings (Portal to Portal) 8 Hour Minimum	\$225.00	\$1,800.00
172	2	Each	Three-Inch Shelby Tube Sample	\$75.00	\$150.00
113	1	Day	Arrow Board, Signs and Cones	\$100.00	\$100.00
164	16	Hour	Flagperson	\$49.75	\$796.00
116	33	Foot	Specialty Backfill	\$7.00	\$231.00
197	2	Each	Borehole Surface Patch/Asphalt	\$36.75	\$73.50
199	100	Mile	Mileage For Personnel	\$0.80	\$80.00
248	Open	Hour	Survey Crew to Stake Test Boring Locations and Obtain Ground Surface Elevations	CLIENT TO PROVIDE	
288	4	Hour	Technician for Property/Utility Clearance	\$49.50	\$198.00
287	6	Hour	Stenographer/Word Processing	\$37.50	\$225.00
249	2	Hour	Draftsperson	\$55.00	\$110.00
251	1	LS	Engineering Services to Stake Test Boring Locations, Supervise Drilling Operations, Examine Samples, Review Data and Prepare Engineered Test Boring Logs and a Summary Report of Findings	\$2,000.00	\$2,000.00

ESTIMATED TOTAL: \$5,763.50

Client: Sycamore Township
Proposal Number: N150219

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Contact Person: Mr. Tracy Kellums

email address: tkellums@sycamoretownship.org

Telephone No.: 513-791-8447

Fax No.: 513-792-8564

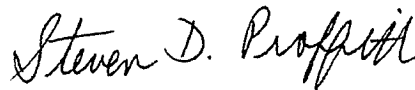
The accompanying letter dated March 25, 2015 by Thelen Associates, Inc. supports this Proposal-Agreement form and is made a part hereof.

If the specific conditions, services, fee schedule and **17 general conditions (see previous pages)** for this project are acceptable to you, please sign where noted below and return a signed copy. This will also serve as our authorization to proceed.

Accepted: _____

Mr. Greg Bickford
Sycamore Township

Respectfully submitted,
THELEN ASSOCIATES, INC.



Date: _____

Steven D. Proffitt
Senior Business Development Associate

Important Information about This Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did

whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation is an offer to better manage your risk.* Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk "Catch-22" situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report's recommendations when another firm performs the services needed to evaluate the recommendations' adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project's geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not

have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project **is not** a mold prevention consultant; **none of the services being offered have been designed or proposed for the purpose of mold prevention.**

Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members' misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by hav-

ing your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members' plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

Read Responsibility Provisions Closely

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal's provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance

Membership in ASFE/The Best People on Earth exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with an ASFE member geotechnical engineer for more information. Confirm a firm's membership in ASFE by contacting ASFE directly or at its website.



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