

**A RESOLUTION OF THE TOWNSHIP COUNCIL OF NORTH BRUNSWICK
AUTHORIZING AN AGREEMENT WITH HILLMANN CONSULTING
TO PROVIDE A REPORT ON THE ENVIRONMENTAL CONDITIONS
OF THE MUNICIPAL COMPLEX
AS AN EXTRAORDINARY UNSPECIFIABLE SERVICE**

WHEREAS, Hurricane Ida impacted New Jersey on Wednesday, September 1, 2021, bringing severe weather conditions including strong winds, reports of tornadoes, and heavy and sustained rainfall in some areas; and

WHEREAS, the storm caused severe damage to municipal facilities, infrastructure, vehicles and equipment, including the Municipal Complex which had extensive damage to the sections of the Police Department, exterior façade and basement where the mechanical room is located; and

WHEREAS, following the event professionals were engaged by the Insurance Company and excess carrier to review the municipal complex and provide a report on findings and issue an opinion to the carrier that is used as a basis for determination of coverage; and

WHEREAS, in the months following the initial report, municipal officials challenged the findings and requested areas not covered in the report that had also sustained damage be evaluated, which led to supplemental engagements by the insurance carrier to amend the findings, specifically addressing concerns with the exterior wall and façade; and

WHEREAS, Halliwell Engineering Associates that had been engaged on the side of the Insurance Company issued an investigation report in May of 2022, followed by MKA issuing a supplemental report in July of 2022, specifically to address concerns with the exterior façade; and

WHEREAS, in the fall of 2022, municipal officials and professionals working with the Township held meetings with the insurance carrier and their engaged professionals to discuss findings included within the reports; and

WHEREAS, in October and November of 2022, municipal officials working with legal counsel and the Risk Manager raised concerns with the findings to members of the Garden State Joint Insurance Fund and requested the carriers cover costs associated with an independent study of the exterior, that would be engaged by the Township; and

WHEREAS, in December of 2022, pursuant to Resolution 346-12.22, an agreement with BDO USA, LLP was authorized for claims administration services and for assistance with the reporting, documentation and submission requirements; and

WHEREAS, in January of 2023, representatives for BDO USA, LLP working with municipal officials, identified and met with professionals from Amphion Analytical Engineering, PA to provide a proposal to conduct a Building Envelope Moisture Intrusion Investigation that will determine the scope of damage to the cavity of the exterior wall, which requires working with an appointed environmental firm for an analysis of the sheathing within the façade; and

WHEREAS, following Hurricane Ida, Hillmann Consulting was engaged by the contractor under the Insurance Carrier to provide an independent report on air quality conditions, moisture mapping of the interior walls and an assessment of HVAC duct work to be remediated; and

WHEREAS, due to an additional study needed at the Complex, specifically during the review of the façade, it is necessary to engage Hillmann Consulting to coordinate with Amphion Analytical Engineering, PA for a more comprehensive investigation of the exterior façade; and

WHEREAS, with said prior experience reporting on the Municipal Complex, together with the professional credentials and education necessary, Hillmann Consulting possess the expertise, extensive training, and proven reputation to provide the analysis and report on the environmental conditions within the facility; and

WHEREAS, it has been determined that the Township could not procure these services pursuant to N.J.S.A. 40A:11-1 et seq. under a fair, open, and competitive process, since the contractor for the insurance carrier had previously engaged Hillmann Consulting for environmental reporting and the selection of a new vendor could disrupt the chain of custody for reporting environmental testing previously performed by Hillmann Consulting during the moisture mapping phase conducted in September of 2021; and

WHEREAS, the Township, as a local government contracting unit, may also award contracts, under an alternative process to the Fair and Open process pursuant to N.J.S.A. 19:44A-20.4 et seq., that are specialized and of an extraordinary unspecifiable nature; and

WHEREAS, Hillmann Consulting with the extensive training and proven reputation has provided a proposal for testing and reporting the environmental conditions of the building including the exterior sheathing of the façade with an estimated cost of \$10,243.00, based on the anticipated testing that will be required as part of the moisture and microbial investigation, to be scheduled in February; and

WHEREAS, Hillmann Consulting has completed and submitted a Business Entity Disclosure Certification which certifies that Hillmann Consulting has not made any reportable contributions to a political or candidate committee in the Township of North Brunswick in the previous one year, and that the contract will prohibit Hillmann Consulting from making any reportable contributions through the term of the contract; and

WHEREAS, in addition, Hillmann Consulting has completed and submitted a C.271 Political Contribution Disclosure Form pursuant to N.J.S.A. 19:44A-20.26 et seq.

NOW THEREFORE BE IT RESOLVED, on this 6th day of February 2023, that the Township Council of the Township of North Brunswick does hereby authorize the Mayor to execute and the Township Clerk to witness an agreement with Hillmann Consulting for said services with an estimated cost of \$10,243.00 in accordance with their fee schedule.

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution; and

BE IT FURTHER RESOLVED notice of this action shall be published in the Home News & Tribune as required by law within 10 (ten) days after its passage.

CERTIFICATION

I, Cavel Gallimore, Chief Financial Officer, hereby certify that \$10,243.00 is available for this purpose in Capital Ordinance 22-23 account C-04-55-C22-230-902 contingent upon reimbursement under the insurance claim. Contract PRO23039

Cavel Gallimore
Chief Financial Officer

Justine Progebin
Business Administrator

Ronald Gordon, Esq.
Township Attorney
Approved as to legal form

RECORDED VOTE:

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
HUTCHINSON				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MEHTA				
MAYOR WOMACK				

I hereby certify that the above Resolution was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on February 6, 2023.

Lisa Russo
Township Clerk



CONTRACT AGREEMENT

Date: February 3, 2023	
This contract is by and between:	
Hillmann Consulting, LLC (hereinafter "Hillmann") 1600 Route 22 East - First Floor Union, NJ 07083 Phone: 908-688-7800	Township of North Brunswick (hereinafter "Client") 710 Hermann Road North Brunswick, NJ 08902 Attn: Justine Progebin Phone: (732) 247-0922 Email: jprogebin@northbrunswicknj.gov

Project Name/Address:	710 Hermann Road North Brunswick, New Jersey 08902	Project Type:	Phase 1: Moisture and Microbial Investigation
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Time of Performance:	Hillmann anticipates the orderly and continuous progress of the Project through completion. The completion of Hillmann's scope of work shall be performed in a reasonably expected period of time.
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This Agreement will not be binding on any party until fully executed copies are exchanged by the Parties.

Hillmann and Client wish to enter into an Agreement for Hillmann to provide the services described in Exhibit "A", Scope of Work, which is specifically made a part hereof, for the compensation set forth in Exhibit "B", Cost and in consideration of the mutual promises herein, Client and Hillmann agree as follows:

In consideration of these services, client shall compensate Hillmann as set forth in Cost Proposal attached as Exhibit "B" and specifically made a part hereof.

Hillmann and Client agree to be bound by the provisions of Hillmann's General Terms and Conditions attached as Exhibit "C" and specifically made a part hereof.

Township of North Brunswick	Hillmann Consulting, LLC
Signature: _____	Signature: _____
Printed Name: _____	Tammy Krapf, CMI, CIEC National Technical Director, EH&S
Title: _____	Date: _____
Date: _____	

In witness whereof, the parties hereto have duly executed and delivered this Agreement, as of the dates and year first written above.



The Hillmann Consulting Difference

Making a better future for all the communities we touch.

At Hillmann Consulting, LLC, we're committed to making a better future for all the communities we touch. Our multidisciplinary team works together on every project, bringing decades of collective knowledge and expertise to our clients. We care, not only about our people, but all people. We're not just about health and safety and construction management, we're about kindness, giving back, and striving to truly make a difference. Hillmann is a Great Place to Work Certified company and an Inc. 500/5000 Fastest-Growing Privately Held Firm.

- **BUSINESS ACUMEN.** Communication is key. We listen, ask questions, and take the time to bring a unique project approach based on our client's business needs and goals. We approach each project with an unrivaled level of integrity and expertise.
- **COMPREHENSIVE SERVICES.** Hillmann provides a wide range of Environmental Consulting, Risk Management, Construction Risk Management, and Construction Services across a diverse group of markets nationwide. Regardless of the project size or scope, our goal is to provide our clients with innovative solutions to their most complex problems. We will continue to expand our services to meet the ever-changing needs of our clients. We currently offer the following services:
 - Asbestos, Lead, & Mold
 - Environmental Health & Safety
 - Risk Management & Loss Control
 - Construction Site Safety
 - Owner's Rep/Construction Services
 - Construction Loan Monitoring/Construction Risk Management
 - Developer Assistance
 - Real Estate Due Diligence
 - Site Investigation & Remediation
 - Industrial Hygiene/Occupational Safety
 - Laboratory Services
 - Training & Awareness
 - Emergency/Disaster Response
- **REPUTATION.** With over 35 years of experience, Hillmann sets the standard for all other firms in our industry. We help our clients find the best approach to their unique needs and tailor our reports to those needs.

Our Mission is simple. *We provide expert solutions to protect the value of your property and the health and safety of your people.*

With offices spanning the United States from coast to coast, Hillmann is strategically positioned to provide services in any market. Our portfolio of clientele includes Property Owners, Property Management Firms, Commercial Lenders, Insurance Companies, and Construction Management Firms to name a few. We link our enduring company values with the values and priorities of our clients. At Hillmann, your property is our priority.

EXHIBIT "A"
SCOPE OF WORK:**Phase 1: Moisture and Microbial Investigation**

Testing performed at the above-mentioned address will consist of the following parameters:

- § Visual Inspection
- § Fungal Identification Samples
- § Moisture Meter/Thermal Imagery

Sampling Scheme:

Hillmann proposes to conduct an investigation throughout the subject property for water damaged and microbially impacted and accessible building materials. The investigation will include visual observations and moisture content readings in conjunction with thermal imagery in accessible areas throughout the subject space.

Additionally, Hillmann will work with the onsite investigative engineers assessing the building's façade to identify areas in the façade impacted by water intrusion and potential mold. Hillmann is not responsible for creating or sealing investigative core holes made throughout the building. Hillmann includes up to ten (10) surface fungal spore samples to be utilized at the discretion of the onsite investigator to assist in providing confirmation of microbial growth.

Hillmann will review the previously issued moisture maps and clearance reports and compare with current damages identified. A scope of work report will be provided with the findings, results and remaining recommendations.

Hillmann requires a 50% retainer or written cost approval from the insurance adjuster if the Hillmann's services will be reimbursed under an insurance claim.

EXHIBIT "B"				
PROJECT COSTS				
Project Fees and Estimated Costs: The following fees will apply to the work:				
Units	Rate	Qty.	Type	Cost
A. Industrial Hygienist	\$992.00	4.00	Shift	\$3,968.00
B. Certified Industrial Hygienist	\$240.00	10.00	Hour	\$2,400.00
C. Thermal Imaging Camera/Moisture Meter	\$225.00	3.00	Shift	\$675.00
D. Fungal Id via Optical	\$90.00	10.00	Sample	\$900.00
E. IH Report	\$550.00	1.00	Flat	\$550.00
F. IH Project Management	\$175.00	10.00	Hour	\$1,750.00
Estimated Cost for Services:				\$10,243.00
Client will only be charged for labor and samples utilized.				
The project fees and Estimated Cost for Services are based upon the information received and conditions known to Hillmann at the time of this writing. In the event that site conditions and/or information previously unknown to Hillmann warrants additional services to complete the scope of work, Client will be notified for approval of additional costs. Additional services requested by Client that are not specifically addressed in this proposal will be performed in accordance with Hillmann's Standard Fee Schedule.				

EXHIBIT "C"

GENERAL TERMS AND CONDITIONS

1. PAYMENT: Unless the parties agree upon a billing schedule, monthly invoices will be submitted to Client and a final invoice will be submitted upon completion of the services. Invoices will include charges for hours worked and expenses incurred, or will be Lump Sum as agreed upon in the Project Cost Proposal. Each invoice is due on presentation and is considered past due thirty (30) days from the invoice date. Client agrees to notify Hillmann of any questions concerning an invoice or any reason for non-payment within the initial thirty-day period, and failure to provide notification shall be a waiver of such issues. Client agrees to pay a finance charge of one and one-half percent (1½ %) per month on past due accounts. Hillmann reserves the right to suspend or terminate work under this agreement if Client is delinquent in making payment when due. Client shall pay reasonable attorneys' fees or other reasonable costs incurred by Hillmann in collection of delinquent amounts.

2. COST INCREASES, DELAY, NON-PERFORMANCE, SITE CONDITIONS: If Hillmann's performance under this agreement extends beyond twelve (12) months, or if Hillmann is required to modify the Scope of Work at Client's request or to comply with regulatory changes, or in the event of changed conditions, Hillmann shall have the right to request a cost increase. Upon notice of a cost increase request, the parties shall confer and seek agreement. If the parties cannot reach an agreement, either party shall have the right to terminate this agreement.

Hillmann reserves the right to refuse to perform work or provide services if conditions exist that, in Hillmann's opinion, pose a risk of serious injury or a danger to life and/or health of workers. If an unsafe condition is identified, Hillmann will notify Client and suspend operations until the unsafe condition is corrected or abated. Hillmann reserves the right to modify the Scope of Work if, in its opinion, the stated Scope of Work poses a risk of serious injury or a danger to life and/or health of workers. Hillmann will notify Client for agreement prior to performing the modified scope of work.

Services under this agreement may be delayed by seasonal conditions and/or site conditions that prevent or inhibit performance, or if unanticipated hazardous materials or conditions are encountered. These delays and any delays caused by Client and/or its subcontractors, consultants, agents, officers, directors or employees, or delays caused by the permitting process or governmental/municipal employees, shall extend the contract completion date and Hillmann shall be paid for Services performed to the delay start date plus reasonable delay fees. Delay fees include, but are not limited to, personnel and equipment deferment and reschedule modifications; labor and material escalation; and extended overhead costs directly attributable to the delay. Delays within the scope of this section in excess of thirty (30) days shall render the agreement subject to renegotiation or termination, at the option of either party.

Hillmann shall not be responsible or liable for damages allegedly arising from non-performance or delays beyond the reasonable control of Hillmann including acts of God, actions of Federal, State and local governmental authorities and regulatory agencies, storms, floods, epidemics, war, riot, strikes, lockouts, pandemic or any inability to supply personnel, information or equipment to the project. In the event of any of the foregoing, Hillmann shall make reasonable efforts to resume operations as soon as reasonably possible.

If Hillmann encounters unexpected conditions that will materially impair Hillmann's ability to complete the Scope of Work or that would result in a material change relative to the price Proposal for the Scope of Work, Hillmann will notify the Client and may temporarily cease work and seek a modification of this Agreement pursuant to the following paragraph. Unexpected conditions include, but are not limited to: unexpected impediments to site access such as dense vegetation, clear-cut areas, stored materials and/or equipment, highly disturbed ground, site boundaries not clearly marked, inaccurate topographic base maps, lack of ground control, unanticipated contamination, an unknown or abandoned underground storage tank(s) or line(s) and associated equipment that demonstrate that they have caused a release of oil and/or hazardous material to the environment and this release causes a substantial increase in the Scope of Work and costs, construction or reconfiguration of the Site (by forces or entities outside the control of Hillmann) to the extent that it interferes with the Scope of Work, promulgation of new, or a change in interpretation of existing, federal, state, or local law, or regulation, ordinance, or written policy, other limitations of access to the Site or adjacent properties, changes in access, significant changes in access agreements, access that requires the institution of administrative or legal action, or access that requires unreasonable or uncustomary monetary expenditures, or demands, claims, lawsuits, and

the like that impact the progress of or require additional effort not accounted for in the Scope of Work (collectively "Unexpected Condition").

If an Unexpected Condition occurs, the parties shall then have the right to amend or modify this Agreement, including extending the time for performance or changing cost, provided, however, that if the parties cannot agree on such an amendment or modification within seven (7) days of such notification to the Client by Hillmann, either party may terminate this Agreement.

3. CLIENT'S RESPONSIBILITIES: Client agrees to undertake the following:

- (A) Designate a representative having authority to give instructions, receive information, define Client's policies, make decisions and take action with respect to the Project.
- (B) Client will provide, or obtain from the appropriate party, site access for Hillmann, its subcontractors, and all personnel and equipment required to complete the services under this Agreement. If Hillmann's Scope of Work requires destructive testing or destruction of any material to gain access to certain areas, Hillmann will take all necessary precautions to minimize damage to the property, but Hillmann shall not assume responsibility for restoration of damage that may occur during the normal course of project performance.
- (C) Provide all criteria and information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, and any budgetary limitations.
- (D) Provide all available information, including previous reports and any other data in possession of Client relevant to the Project. These data may include: (a) data prepared by others, including building surveys for hazardous materials, air quality testing, subsurface borings and/or testing of subsurface media, hydrographic surveys, and laboratory tests and inspections of samples, materials and equipment; (b) appropriate professional interpretations of such data; (c) environmental assessments and impact statements; (d) property, boundary, easement, right-of-way, topographic and utility surveys; (e) property descriptions, zoning, deed and other land use restrictions; and (f) other necessary special data or consultations. Hillmann may rely on the accuracy and completeness of the supplied data.
- (E) Provide adequate lighting, access and information to allow for a meaningful evaluation, inspection and observation, where applicable.
- (F) Furnish approvals and permits from governmental authorities or other entities having jurisdiction over the Project and approval from others as may be necessary for the timely completion of the Project, unless the Client has directed Hillmann to prepare applicable submittals on the Client's behalf within the Hillmann's Scope of Work.
- (G) Give prompt written notice to Hillmann whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Hillmann's services.

4. HILLMANN'S RESPONSIBILITIES: Hillmann agrees to undertake the following:

- (A) Hillmann shall perform the services described in the Scope of Work attached hereto as Exhibit A in the manner customary for competent and prudent professionals performing such services at the time and place where the services are provided.
- (B) Hillmann shall provide all services as an independent contractor. Personnel performing Services will be Hillmann's employees or personnel that are subcontracted by Hillmann.
- (C) With respect to Hillmann employees, Hillmann shall be responsible for: (i) the payment of compensation and the provision of any employee benefits; (ii) the payment of workers' compensation, disability benefits, and unemployment insurance; and, (iii) withholding and payment of all applicable Federal, State, and local income taxes and social security.
- (D) Hillmann shall be responsible for training its employees and for the safety of Hillmann's employees and worksite conditions under Hillmann's direct control.
- (E) Hillmann shall, at its sole expense, maintain in full force and effect during its performance under this Agreement the insurance coverages set forth below ("Required Coverages"). Hillmann shall cause Client and its Landlord to be named as an additional insured under its General Liability, Auto, Pollution and Excess policies described below. If requested, Hillmann shall provide to Client Certificates of Insurance and/or specific policy endorsements evidencing that the insurance policies described as follows are in effect.

Client must advise Hillmann if other entities should be added to Hillmann's General Liability, Auto, Pollution and Excess policies as additional insured(s).

General Liability: \$1,000,000 per occurrence and \$2,000,000 General Aggregate with Contractual Coverage, Products & Completed Operations. \$2,000,000 aggregate applies per project.

Automobile Liability: Combined Single Limit of \$1,000,000 per occurrence or primary/excess policies with this amount or greater in coverage. Limit of \$1,000,000 for Owned, Non-Owned & Hired Auto Liability.

Workers Compensation: Statutory limits for the state in which the project is located and Employers Liability of \$1,000,000 bodily injury by accident; \$1,000,000 bodily injury by disease policy limit; and \$1,000,000 bodily injury by disease each employee.

Professional Liability and Pollution Liability: \$1,000,000 per claim / \$2,000,000 aggregate. Professional claims made/contractors pollution occurrence/site pollution claims made.

Excess Liability: \$15,000,000 per occurrence / \$15,000,000 aggregate; excess over General Liability, Pollution Liability, Professional Liability, Auto Liability and Employers Liability.

Pollution deductible \$15,000

Professional deductible \$25,000

General Liability deductible None

All insurance policies required to be carried by Hillmann shall; a) be provided at the sole cost and expense of Hillmann; b) be written on an occurrence, not a claims-made basis, with the exception of Professional Liability; c) be written by companies duly licensed to transact the prescribed coverages in each jurisdiction in which the work or any portion thereof is to be performed; d) be primary and non-contributory; e) cover Hillmann for both ongoing operations and completed operations; f) waive subrogation rights and; g) provide that the prescribed coverages may not be reduced, cancelled, or non-renewed without at least 30 days' prior written notice to the Owner, except in the case of a cancellation for non-payment of premium, in which case 10 days' prior written notice shall be sufficient.

Deviations from these contract provisions or our standard insurance may incur additional costs to the Client.

5. DUTIES AND RESPONSIBILITIES NOT UNDERTAKEN: The Parties agree that Hillmann shall not have the authority to perform and shall not perform the following duties or tasks:

- (A) Direct the employees of construction manager, owner or contractors or any entity other than Hillmann, concerning the means and methods of their work, safety issues or any other matters.
- (B) Enforce job site safety plan or plans. Hillmann will not be responsible for the health and safety practices performed by others on the Site.
- (C) Exert control over the work site.
- (D) Resolve disputes between contractors or direct their work.
- (E) Stop or direct the work being performed by parties other than Hillmann at the project site.
- (F) Enter into contracts on behalf of owner.
- (G) Prepare accident reports or investigate accidents occurring on site unless involving Hillmann employees.

6. AGENCY/REGULATORY FILINGS/COSTS: Unless otherwise stated in the scope of work, any costs, charges or assessments imposed by any federal, state, local or municipal agency in connection with the filing or review of any reports or documents or charges assessed based upon the transportation, removal and/or disposal of any hazardous materials shall be paid by the Client and not by Hillmann.

If client receives written notice from a municipal or regulatory agency or entity stating that a report or communication has not been received or is late or defective in any manner, client shall forward a copy of the notice to Hillmann at

1600 Route 22 East, Union, N.J. 07083, within 2 days of receipt. Should client fail to provide a copy of the notice to Hillmann as required herein, Hillmann shall not be responsible for any fine, penalty or cost assessed against client, and client shall indemnify, defend and hold Hillmann harmless from and against any fines, penalties or costs associated with the deficiency identified in the notice.

7. RELIANCE: No individual or entity other than Client shall be permitted to rely upon any data, interpretation, opinions, reports or other information or documentation produced by Hillmann under this agreement. Unless a party or entity obtains Hillmann's expressed written consent for reliance, any such reliance shall be at such party's or entity's sole risk. Hillmann may, in its sole discretion, withhold its consent to such reliance and/or Hillmann may condition consent for reliance upon payment of a fee or other conditions, but in any event, any individual or entity seeking the right to rely must agree to be bound by the provisions of this agreement relating to the limitation of Hillmann's liability hereunder.

Client assumes responsibility for business decisions that it makes utilizing information in the report provided by Hillmann. Hillmann shall not be responsible for any conclusions, interpretations and/or decisions of Client.

8. LIMITATION OF LIABILITY: No warranty, expressed or implied, is made or intended by our proposal for consulting services, by our furnishing oral or written reports, or by our observation of work. Client recognizes that actual conditions may vary from those encountered at the location where visual observations, measurements, borings, surveys or explorations are made by us or provided by others, and that our data, interpretations and recommendations are based solely on the information available. Hillmann will be responsible for such data, interpretations and recommendations, but shall not be responsible for the interpretation by others of the information developed. Client also recognizes that monitoring of construction by a qualified professional is essential to verify that designs are appropriate for actual site conditions.

Should Hillmann or any of our professional employees be found or alleged to have been negligent in the performance of professional services or to have made and breached any expressed or implied warranty or made any misrepresentation, or breached this agreement in any way, the Client agrees for itself and its successors and assigns that the maximum aggregate amount of Hillmann's liability to all parties and/or that of said professional employees, including, without limitation, any indemnity obligation or attorney's fees to enforce this, or any provision of this agreement, shall be limited to one million dollars (\$1,000,000). Notwithstanding the number of claimants or the number of claims or basis or theories of liability, Hillmann's liability under this Agreement is capped at one million dollars (\$1,000,000).

Neither party shall be liable to the other for any special, indirect or consequential damages, where caused or alleged to be caused by negligence, professional negligence, strict liability, statutory violation, breach of contract or warranty under this Agreement.

9. UNDERGROUND STRUCTURES/CONDITIONS: If subsurface explorations are performed, Hillmann will contact the appropriate government or private agency that informs applicable subsurface utilities. Client will provide Hillmann with all plans and other information in Client's possession or control concerning the Site's underground structures, and the Client will provide a representative that is familiar with the Site that will work with Hillmann to verify that all underground utilities are marked and to aid in locating the proper place(s) for drilling or excavation. If the Scope of Work includes services that are to be performed on property not owned by Client, including any adjacent or nonadjacent third-party property owners, Hillmann will request utility locations and other plans from the third-party property owner or other person(s) designated by the Client. The Client agrees to indemnify, defend and hold harmless Hillmann against any claim of damage or loss associated with the repair or restoration of any improvements that are incorrectly marked, not located on plans, or not identified in the information provided by the Client to Hillmann.

10. HAZARDOUS MATERIALS, WASTES AND CONTAMINATED MEDIA: Hillmann assumes no responsibility or liability for the existence of any hazardous or toxic waste, material, chemical, compound, substance or any other type of environmental hazard or pollution existing at the premises or for the release thereof, unless caused by the negligence of Hillmann. Client agrees to indemnify, defend and hold Hillmann harmless from and against any liability based upon the presence or release of hazardous materials pursuant to the Indemnification provision below.

Client agrees that title to all hazardous materials originating at or removed from Client's premises will remain in and with Client and that Client will not challenge said title by any means, including actions in state or federal court or any other forum. Hillmann shall not be considered an owner or generator of any hazardous materials at the site.

Client further agrees that, if this Agreement requires the containerization, transportation, or disposal of any hazardous or toxic wastes, material or substances, Hillmann is not, and has no authority to act as a generator, arranger, transporter or disposer of any hazardous or toxic wastes, materials or substances that may be found or identified on, at or around Client's premises.

Unless otherwise indicated in the Scope of Work, costs associated with the testing, storage, transportation and/or disposal of any samples and associated media which could be considered hazardous under state or federal law or regulation have not been included in cost estimates provided to the Client. The Client, at the Client's expense, shall make arrangements for transport, treatment, storage and disposal. Client will indemnify, defend, and hold Hillmann harmless from any loss or damage resulting from any claim that arises, in whole or in part, as a result of the handling, storage, transportation, or disposal of any contaminated media by Hillmann while performing under this Agreement.

11. PERMITS: Unless otherwise specified by the Scope of Work, Hillmann does not obtain permits on behalf of the Client but will assist the Client in obtaining permits at Client's sole cost and expense.

12. REGULATORY COMPLIANCE: Based upon the Scope of Work, Hillmann may present opinions with respect to the environmental conditions of the Site. The parties acknowledge and agree that the actual determination of compliance with federal or state regulations, for both the present operator and the former operators, can only be made by the appropriate regulatory agencies. Client acknowledges and agrees that it, or the owner, operator, occupant, or other responsible party under the local, state, or federal laws (hereinafter "Responsible Party"), may incur additional costs in order to be in compliance based on any regulatory agencies determination of compliance or interpretation of regulations, and that Client or the Responsible Party will be responsible for such additional costs. These costs may include, but are not limited to, annual compliance fees charged by a regulatory agency. Nothing in the Agreement shall be deemed to establish that the Client is a Responsible Party; such a designation is established by statute, regulations, or the governing regulatory agency.

In states where Hillmann employees may act as a licensed professional interpreting existing state regulations and guidelines as prescribed by the applicable state, Client acknowledges that Hillmann's licensed professionals may be bound by state law to meet regulatory requirements. Client further acknowledges that Hillmann's duty to comply with state law may in some instances conflict with the Client's interests; in which case, Hillmann will seek to comply with the law.

Hillmann's licensed professional opinions are not a guarantee of acceptance by the state regulatory agency. Each state may conduct audits of environmental decisions, which include deed restrictions as an institutional control to limit access to known contamination at a property. Client acknowledges that any costs that arise from Hillmann's actions to comply with the governing regulatory agency's requests during such an audit, including Hillmann's fees for time and materials used in preparing responses, unless the Scope of Work specifically states otherwise, shall be paid by Client. Client acknowledges and agrees that it will be responsible to reimburse Hillmann for any such costs, and that the Client will be solely responsible to seek any and all reimbursements from third parties at its own expense.

13. CHEMICAL CONDITIONS: If included in the Scope of Work, chemical analyses may be performed for certain parameters during this assessment. Client acknowledges that additional chemical constituents not searched for during the study may also be present in soil or groundwater at the Site. Chemical conditions reported by Hillmann reflect conditions only at the locations tested, at the time of testing, and within the limitations of the methods used and the Scope of Work. Such conditions can vary rapidly from area to area and from time to time; in particular, groundwater and vapor intrusion evaluations are subject to seasonal variations. The Client acknowledges and agrees that it will be responsible for the cost of Hillmann returning to the site and any subsequent testing or re-testing to satisfy regulatory requirements, unless expressly provided for in the Scope of Work.

14. ASBESTOS INVESTIGATIONS OF ROOFING MATERIALS: If the Scope of Work calls for an inspection of roofing materials for asbestos containing material, the following shall apply. In order to conduct an asbestos survey of roofing materials, core samples of the roofing material will be taken. The owner shall be responsible to provide and pay a certified roofing contractor to repair any penetrations in the roofing system made during the survey. Hillmann will not be responsible for any damage to the roofing systems and will not make repairs to damage caused during the sampling process.

15. INDEMNIFICATION OBLIGATIONS:

(A) **HAZARDOUS MATERIALS:** To the fullest extent permitted by law, Client shall indemnify, defend and hold Hillmann, its officers, directors, employees, consultants and subcontractors harmless from and against all liabilities, obligations, claims, potential claims, alleged claims, demands, suits, losses, damages, judgments, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and other defense expenses allegedly caused by the testing, storage, transportation and/or disposal, presence of, exposure to or release of hazardous material or contaminated media.

- (1) Such obligation to defend shall begin upon notice by Hillmann to Client of a claim, action, or proceeding.
- (2) Such obligation to defend shall include, without limitation, payment of Hillmann's reasonable costs incurred for labor and other expenses in responding to such claim or claims and the costs of enforcing the terms of this section.

(B) **NEW YORK STATE LABOR LAW - STATUTORY VIOLATION:** The parties agree that Hillmann is a consultant without authority or responsibility to direct or control the work. Hillmann's role at the site and the nature and level of its presence at the site require that Hillmann not be subject to liability in the absence of its actual negligence. Where a claim or potential claim for personal injuries or wrongful death is based upon an alleged violation of the New York State Labor Law, sections 200, 240 or 241(6) or any statute that imposes liability without proof of negligence, to the fullest extent permitted by law, Client shall indemnify, defend and hold Hillmann, its officers, directors, employees, consultants and subcontractors harmless from and against all liabilities, obligations, claims, potential claims, alleged claims, demands, suits, losses, damages, judgments, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and other defense expenses resulting from, arising out of or occasioned by the alleged New York State Labor Law violation as aforesaid, whether or not there is also a claim of active negligence on Hillmann's part.

- (1) Such obligation to defend shall begin upon notice by Hillmann to Client of a claim, action, or proceeding.
- (2) Such obligation to defend shall include, without limitation, payment of Hillmann's reasonable costs incurred for labor and other expenses in responding to such claim or claims and the costs of enforcing the terms of this section.

(C) **UNDERGROUND STRUCTURES/CONDITIONS:** If, in the absence of negligence on Hillmann's part, property damage, personal injury or wrongful death occurs as a result of an incident involving a subsurface risk, to the fullest extent permitted by law, Client shall indemnify, defend and hold Hillmann, its officers, directors, employees, consultants and subcontractors harmless from and against all liabilities, obligations, claims, potential claims, alleged claims, demands, suits, losses, damages, judgments, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and other defense expenses allegedly caused by the subsurface incident.

- (1) Such obligation to defend shall begin upon notice by Hillmann to Client of a claim, action, or proceeding.
- (2) Such obligation to defend shall include, without limitation, payment of Hillmann's reasonable costs incurred for labor and other expenses in responding to such claim or claims and the costs of enforcing the terms of this section.

(D) **NEGLIGENCE OF HILLMANN:** To the fullest extent permitted by law, HILLMANN shall indemnify, defend and hold harmless Client, its officers, directors, employees, consultants and subcontractors from and against all liabilities, obligations, claims, potential claims, alleged claims, demands, suits, losses, damages, judgments, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and other defense expenses allegedly caused by the negligence of Hillmann.

- (1) Such obligation to defend shall begin upon notice by Client to Hillmann of a claim, action, or proceeding.

- (2) Such obligation to defend shall include, without limitation, payment of Client's reasonable costs incurred for labor and other expenses in responding to such claim or claims.
- (3) The parties agree that the duty to defend any indemnified party hereunder for alleged professional negligence shall be limited to the amounts paid under Hillmann's General Liability policy of insurance, if any.

(E) **NEGLIGENCE OF CLIENT:** To the fullest extent permitted by law, Client shall indemnify, defend and hold Hillmann, its officers, directors, employees, consultants and subcontractors harmless from and against all liabilities, obligations, claims, potential claims, alleged claims, demands, suits, losses, damages, judgments, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and other defense expenses allegedly caused by the negligence of Client.

- (1) Such obligation to defend shall begin upon notice by Hillmann to Client of a claim, action, or proceeding.
- (2) Such obligation to defend shall include, without limitation, payment of Hillmann's reasonable costs incurred for labor and other expenses in responding to such claim or claims and the costs of enforcing the terms of this section.

Should any of the indemnity obligations of any party to this agreement be unenforceable in any jurisdiction regarding the duty to defend or the duty to indemnify, or both, it is the intent of the parties that the obligations be enforced to the extent permitted in the jurisdiction.

The indemnity obligations contained in this Paragraph 15 shall survive the termination of this Agreement.

16. OWNERSHIP OF DOCUMENTS: Any written materials and test results prepared for Client by Hillmann ("Deliverables") shall be the property of Client. Hillmann is hereby granted a lifetime unlimited license to utilize the Deliverables in accordance with the terms of this agreement. Hillmann shall maintain the Deliverables as Confidential Information and shall not disclose the Deliverables to any third party without Client's written consent. Notwithstanding the foregoing, Client shall not have the right to extend or expand the right to rely upon the facts, opinions, data or reports of Hillmann to third parties without the prior written consent of Hillmann, which consent may be conditioned upon additional payments to Hillmann.

Notwithstanding anything to the contrary in this Agreement, Hillmann retains the right to use its knowledge and experience, including processes, ideas, concepts, and techniques that it developed prior to, or independently from, this Agreement in providing services to other Clients.

All reports, drawings, boring logs, plans, specifications, field data, field notes, calculations, estimates and other documents prepared, including electronic media, as instruments of service, shall remain the property of Hillmann.

17. LITIGATION SERVICES: If Client requires Hillmann's services either as a witness in, or support of, litigation or other dispute resolution procedures between Client and a third party, Hillmann will provide such services in accordance with Hillmann's Standard Fee Schedule.

18. NO PROMOTION: If specifically requested, Hillmann agrees that it and its employees, agents and personnel will not, without prior written consent of Client in each instance, unless Client specifies in writing otherwise: (a) use in advertising, publicity or otherwise, the name of Client, or any affiliate of Client, or any partner or employee of Client or any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by Client or its affiliates; or (b) represent, directly or indirectly, that any product or any service provided by Hillmann has been approved or endorsed by Client.

19. COOPERATION: Hillmann and Client agree to cooperate fully with each other and to provide any assistance necessary in connection with any investigation of illegal or fraudulent activities, security breaches or similar situations which may involve Hillmann, Client or their employees.

20. RESOLUTION OF DISPUTES: All claims, disputes and other matters in controversy arising out of or in any way related to this agreement will be resolved through litigation. If a litigation arises from matters related to the services

provided under this agreement, then the parties waive trial by jury and agree that any litigation shall be the subject of a bench trial by a single judge.

21. NOTICES: Any notice or communication required to be given by either party hereunder shall be in writing and shall be hand delivered or overnight delivery by a nationally recognized delivery service or sent certified mail, return receipt requested to the party receiving such communication at the address specified as follows:

If to Hillmann:

1600 Route 22 East
Union, New Jersey, 07083
Attn: Geralanne Maglione
Telephone: 908-688-7800
Facsimile: 908-686-2636

With email copy to: Scalabrese@hillmannconsulting.com

If to Client: _____

Attn: _____
Telephone: _____
Facsimile: _____

22. TERMINATION: This agreement may be terminated by either party upon seven (7) days written notice. In the event of termination, Hillmann shall be paid for the services performed through the termination notice date plus reasonable termination expenses. Hillmann may terminate this agreement immediately in the event of non-payment.

23. SUCCESSORS: This Agreement is binding on the successors and assigns of Client and Hillmann. The Agreement may not be assigned in whole or in part to any third parties by either Party without the prior written consent of the other Party.

24. ENTIRE AGREEMENT: This Agreement, including any schedules, attachments and referenced documents, is the entire agreement between Client and Hillmann. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and shall make specific reference to this Agreement and must be signed by Client and Hillmann.

25. WAIVERS AND SEVERABILITY: A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition, or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect. However, Client and Hillmann will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable and which comes as close as possible to expressing the intent of the original provision.

Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

26. GOVERNING LAW: This Agreement shall be construed and enforced in accordance with the laws of the state where the work is performed without giving effect to the principles of conflicts of law.

27. INTERPRETATION: No provision of this Agreement shall be construed by any arbitrator, court, or other judicial or quasi-judicial authority against any party hereto by reason of such party being deemed to have drafted or structured such provision.

28. AUTHORITY: The person executing this Agreement on behalf of each party represents and warrants that such party has duly authorized this Agreement. (END OF AGREEMENT)