

February 24, 2011

Ms. Sarah-Jane Poli  
Superintendent  
Biddeford School Department  
205 Main Street, P.O. Box 205  
Biddeford, ME 04005

Sent Via Email: [sjpoli2bidschools.org](mailto:sjpoli2bidschools.org)  
[pradding@biddefordmaine.org](mailto:pradding@biddefordmaine.org)

**SUBJECT: Proposed Addendum #1**  
Additional Forensic Indoor Air Quality Evaluation Services  
Regarding Expressed Occupant Concerns Related to  
Occupancy of Certain Areas of Biddeford High School  
During Construction Activity (TBS Project #S0967-02)

Dear Ms. Poli:

### **BACKGROUND AND PROPOSED SCOPE OF ADDITIONAL SERVICES**

In accordance with our approved scope of initial services dated January 11, 2011, this Addendum #1 is being developed as a result of information we have learned regarding current indoor air quality concerns related to the facility. The following recommendations for additional services are presented in our initial report dated February 17, 2011, pages 4 and 5. In the following paragraphs we have outlined the rationale for the proposed services, provided information regarding what is expected to be gained from each task, and illustrated the expected costs.

### **PROPOSED SPECIFIC TASKS**

#### **Task #1: Conduct a Critical Review and Evaluation of Construction Containment. Plans Include Vehicle/Equipment Emission Controls.**

Our review of data received to date, information learned in interviews, and our limited on-site observations of conditions during our one day on-site January 27, 2011, suggests that significant improvements in keeping construction materials out of occupied zones have been accomplished and that more improvements remain to be accomplished, as negative pressures appeared to still not be maintained. Successfully achieving isolation with a many phased construction project of the magnitude being undertaken is a challenging task. TBS has developed detailed construction containment plans and assisted others with those efforts for many years. We believe it would be extremely useful to the district for us to review what is being developed and proposed by the

City and district staff, and for TBS to do some limited auditing of building pressures at each new phase of major renovation set-up for the duration of the project.

**Illustrated Estimated Cost:** We expect the initial review and pressure audit to take one (1) day, and suggest five (5) days be budgeted for future reviews and audits at various phases of construction and reporting.

**Expected total not-to-exceed cost for initial service and reporting .....\$2,500.00.**  
**Expected total not-to-exceed cost for future service and reporting .....\$7,500.00.**

**Task #2: Conduct a Critical Review of Current Ventilation Systems that are in use in the Existing Facility.**

Our review of data received to date, information learned in interviews, and discussion with district staff suggest that some degree of exhaust fan operation and make-up air systems exist within the old building and will exist in the new sections when they are brought on-line. As noted above in proposed Task #1, successfully achieving isolation with a many phased construction project of the magnitude being undertaken is a challenging task. Given TBS's historic experience with successful construction containment for many years, we believe it would be extremely useful to the district for us to review what systems are currently functional and will become functional, and to review the district's and contractor's plans to utilize existing and new systems to assist with achievement of isolation, containment, and air cleaning efforts.

**Illustrated Estimated Cost:** We expect the initial review will take one (1) day and suggest five (5) days be budgeted for future reviews, audit visits, and reporting.

**Expected total not-to-exceed cost for initial service and reporting .....\$2,500.00.**  
**Expected total not-to-exceed cost for future service and reporting .....\$7,500.00.**

**Task #3: Conduct an Evaluation of the Presence of Mold Reservoirs in Specific Locations.**

There is some test data and occupant reported symptoms that suggest the possible existence of mold reservoirs in some areas. We understand that in many of these areas the district has attempted to address any issues that were reported. These areas include, but are not limited to, Rooms 7, 13, 14, 111, 113, 115, 116, 117, 203, 208, 212, 215/216, 222 and 223, or any others identified in further occupant interviews. While there may not be an immediate health risk based on available data, we have recommended further evaluation intended to identify and limit potential health impacts during occupant activities or construction activities. We propose to visit each area with district personnel, review what efforts have been taken to date, conduct visual observations, and if



warranted, conduct further evaluations, including source sampling of any suspect mold reservoirs or possible evaluative air sampling. Specifics to be determined for each area.

**Illustrated Estimated Cost:** We do not know how detailed and complicated this task will be. We expect the initial on-site reviews of the above rooms to take-up to three (3) days and suggest allowable lab fees to be budgeted for up to \$2,000 in lab work.

**Expected total not-to-exceed cost for service and reporting .....\$8,000.00.**

**Task #4: Conduct an Evaluation of Current District Fugitive Moisture Management Procedures and Methods that are Reported to be Under Development by the City Environmental Office.**

Based on our understanding of the meeting we attended on February 22, 2011, we understand that a city wide response plan will be developed with a focus of preventing the development of mold reservoirs within the first 48 hours after a water intrusion event has occurred, and proper management of wet areas if they remain wet for more than 48 hours at normal room temperatures. This plan, or a different one, should also address at some point, the intentional wetting of carpeting or other flooring surfaces for cleaning purposes, especially during non-heating summer months. We propose to review whatever is developed, and if warranted, make further suggestions or changes to the plans.

**Illustrated Estimated Cost:** We expect this task to take less than one (1) day including reporting when combined with other tasks.

**Expected total not-to-exceed cost for service and reporting .....\$1,500.00.**

**Task #5: Conduct an Effective Cleaning Review**

Based on our understanding of information gained in the past month, it is our limited understanding that the district has implemented floor cleaning methods that should be expected to remove dirt from the building vs. methods such as dust mops, which are known for creating airborne dust which is subsequently redistributed within the facility. We propose to review whatever cleaning plan has been developed for floors and other horizontal non-food surfaces, and briefly observe the equipment and techniques normally used by staff.

**Illustrated Estimated Cost:** We expect this task to take less than one (1) day including reporting when combined with other tasks.

**Expected total not-to-exceed cost for service and reporting .....\$1,500.00.**



**Task #6: Continued Occupant Interviewing of Staff:** We recommend that in addition to the district setting-up communications channels as recommended in the referenced SMACNA IAQ Guideline, that the district schedule additional (suggested two (2) days) of interviewing periods with TBS for any staff who are concerned that current conditions within the school related to odors, dusts, or unknown agents are contributing to ongoing health concerns during occupancy of the facility. We suggest that the school nurse schedule the interviews and the names of those interviewed should remain confidential. We also suggest that the school nurse meet with TBS staff to discuss any student’s health condition that appears to be negatively impacted by occupancy of the facility.

**Illustrated Estimated Cost:** We suggest that the district budget for two (2) days of interviewing and one (1) meeting to review information regarding students with the nurse.

**Expected total not-to-exceed cost for service and reporting.....\$4,000.00.**

**Task #7: (Optional Service Through TBS) To be Subcontracted, or Alternately Arranged Directly with Proposed Medical Expertise: As Feasible, Investigate Reports of Past Anaphylaxis Allergic Reactions.**

During interviews there were reports of at least two individuals experiencing potentially life threatening anaphylaxis allergic reactions related to occupancy of the building at various times. As noted in our initial report, it is our understanding based on communication with the medical expertise that we utilize, that this type of acute immediate reaction can be clearly documented by an emergency department of a hospital, and that without proper medical interpretation, that it can be confused with a less critical, rarely-life-threatening, similar allergic reaction and vice versa. In order to determine if an anaphylaxis reaction did occur, qualified medical expertise is required to evaluate the situation. Additionally, if the reaction did occur, in order to identify the trigger allergen, mandatory professional evaluation of the individual by a board certified allergist is required. If anaphylaxis is confirmed and the trigger identified, the areas where the reactions occurred should be carefully evaluated for the presence of the likely trigger. As feasible, the medical facts related to these situations should be obtained, in confidence if needed, and any potential issues in the facility, if present, should be carefully evaluated and corrected. We propose to arrange for the medical expertise of Dr. Michael Hodgson (resume sent separately).

His suggested costs at the rate of \$200 per hour are in the range of a \$1,000 to \$2,000 per case.

**Expected total not-to-exceed cost for service and reporting.....\$4,000.00.**  
**We recommend that this service be contracted directly with Dr. Hodgson.**



**SUMMARY OF PROPOSED TASK AND ILLUSTRATED COSTS**

As requested, we have listed by high priority (HP), medium priority (MP), and lower priority (LP) the timeline of importance for proposed tasks. We believe and recommend that all tasks should be completed.

**Task #1: Conduct a Critical Review and Evaluation of Construction Containment Plans Including Vehicle/Equipment Emission Control: (HP)**

- 1a Expected total not-to-exceed cost for initial service and reporting.....**\$2,500.00**
- 1b Expected total not-to-exceed cost for future service and reporting ....**\$7,500.00**

**Task #2: Conduct a Critical Review of Current Ventilation Systems that are in use in the Existing Facility: (HP)**

- 2a Expected total not-to-exceed cost for initial service and reporting.....**\$2,500.00**
- 2b Expected total not-to-exceed cost for future service and reporting ....**\$7,500.00**

**Task #3: Conduct an Evaluation of the Presence of Mold Reservoirs in Specific Locations: Including up to \$2,000 in lab fees: (MP)**

Expected total not-to-exceed cost for service and reporting.....**\$8,000.00**

**Task #4: Conduct an Evaluation of Current District Fugitive Moisture Management Procedures and Methods that are Reported to be Under Development by the City Environmental Office: (LP)**

When combined with other tasks.  
Expected total not-to-exceed cost for service and reporting.....**\$1,500.00**

**Task #5: Conduct an Effective Cleaning Review: (LP)**

When combined with other tasks.  
Expected total not-to-exceed cost for service and reporting.....**\$1,500.00**

**Task #6: Continued Occupant Interviewing of Staff: (HP)**

Expected total not-to-exceed cost for service and reporting.....**\$4,000.00**

**Total Above Not-To-Exceed Costs if Approved.....\$35,000.00**

All tasks to be billed based on time and materials billing, and records kept and tracked for each task as separate items.



**Task #7: (Optional Service Through TBS) To be Subcontracted, or Alternately Arranged Directly with Proposed Medical Expertise: As Feasible, Investigate Reports of Past Anaphylaxis Allergic Reactions.**

Expected total not-to-exceed cost for service and reporting.....**\$4,000.00.**  
We recommend that this service be contracted directly with Dr. Hodgson.

**RESULTS**

We will submit interim draft reports of each task if requested, and a draft written summary report in two (2) copies describing the results of our services and any recommendations for corrective action or additional evaluation.

**FEE**

**We have illustrated an expected budget for each proposed task above and a proposed not-to-exceed fee based on standard time and materials billing.**

Mr. Turner’s rate will be discounted by -20% as the district is considered a not for profit institution by TBS.

**Total Above Not-to-Exceed Costs if Approved .....\$35,000.00**

All tasks to be billed based on time and materials billing and records, kept and tracked for each task as separate items. Total does not include medical reviews that we recommend be contracted directly. We will attend up to two (2) meetings if requested. Additional meetings attended at the rate of \$600 per meeting.

**Additional Services:** Once results of the above scope area are available, we will propose additional services and associated fees, as warranted, via addenda.

**SCHEDULE TO ACCOMPLISH WORK AS DESCRIBED**

These services will be provided by William A. Turner, P.E., Steven M. Caulfield, P.E. C.I.H., or other Turner Group staff or consultants, as needed. We are ready to begin these serves as soon as authorization and documents for review are received.

**Proposed Timeline:** Above proposed tasks to be scheduled as soon as authorization is approved. Expected completions of Tasks #1a, #2a, #4, #5, and #6 within two weeks of receipt of materials and meetings. Expected completion of Task #3, within four weeks of authorization to proceed, assuming access off hours can be arranged, or preferably work can be conducted during April vacation week. Expected completion of Task #6 within



two weeks of the nurse scheduling staff interviews and meeting with TBS to discuss students.

### **CLIENT RESPONSIBILITIES**

In order to conduct the report, containment plan reviews, occupant interviews and any future observations, measurements, and analysis as outlined in the scope of work, we would need the following:

1. Availability of documents for review and access for interviews.
2. Authorization from the Owner (Client) for access to various areas, equipment rooms, and the roof, and assistance from the Client's representative during periods of on-site work, including access to ladders necessary for equipment access.
3. Identification of all areas within the building known to contain asbestos-containing materials, or any other material that would be hazardous without proper protective equipment.
4. Agreement to the following:

It is expressly agreed between the Client and Turner Building Science & Design, LLC that the professional services to be provided pursuant to this agreement do not include services associated with asbestos, its detection, abatement, removal and/or disposal.

Our services for this addendum to be provided in accordance with previously submitted **“Standard Conditions for Engagement”** dated July 1, 1999.

### **Selected References**

We will convey Dr. Hodgson's resume as a separate document.



**CONTRACT FORM**

Please sign and return these **Addendum #1** originals as your acceptance of the above scope and terms, including noted attachments, and your written confirmation of any verbal authorization to proceed. *(Please fax the signed signature page back as soon as possible).*

In the event the Client issues a purchase order or other instrument related to the Consultant's services, it is understood and agreed that such document is of the Client's internal accounting purpose only, and shall in no way modify, add to, or delete any of the terms and conditions of the agreement. If the Client does issue a purchase order or other similar instrument, it is understood and agreed that the Consultant shall indicate the purchase order number on the invoices sent to the Client.

We appreciate the opportunity to present this proposal, and look forward to assisting you with the proposed evaluation. If there are any elements of this proposal that do not meet your needs, or if you have any questions, please contact me in our Harrison, ME office at (207) 583-4571, ext. 11, or Steve Caulfield at ext. 14.

Sincerely,

TURNER BUILDING SCIENCE & DESIGN, LLC



William A. Turner, P.E.  
President/CEO



Steven M. Caulfield, P.E., C.I.H.  
Senior Vice President

WAT/sai

Enclosures

Accepted by: **Biddeford School Department**

\_\_\_\_\_ Date: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Title: \_\_\_\_\_

PO# \_\_\_\_\_



**STANDARD FEE SCHEDULE AND PAYMENT TERMS**

**FEE SCHEDULE**

<u>Personnel Category</u>	<u>Hourly Billing Rate*</u> <u>\$ per Hour</u>
Principal .....	185.
Associate .....	150.
Senior Project Manager III.....	130.
Senior Project Manager II .....	120.
Senior Project Manager I .....	100.
Project Manager .....	90.
Associate Project Manager .....	80.
Senior Project Engineer/Architect III .....	120.
Senior Project Engineer/Architect II.....	100.
Senior Project Engineer/Architect I.....	90.
Project Engineer/Architect.....	80.
Engineer/Architect .....	70.
Associate Engineer/Architect.....	60.
Senior Project Designer III .....	95.
Senior Project Designer II .....	85.
Senior Project Designer I.....	75.
Project Designer.....	65.
Designer .....	60.
Associate Designer.....	50.
Technical Word Processing III .....	65.
Technical Word Processing II.....	55.
Technical Word Processing I.....	45.
Technical Aide.....	35.

\* These rates are firm through December 31, 2011. Expert Testimony Rates are 1.5 x Hourly Billing Rates.

**REIMBURSABLE EXPENSES AND OUTSIDE SERVICES**

Transportation and Subsistence - Transportation and subsistence expenses will be billed at cost plus a 15% service charge.

Outside Services - Outside services will be billed at cost plus a 15% service charge. Examples of outside services ordinarily charged to projects are subcontractors; laboratory charges; outside printing and reproduction; shipping charges; rental vehicles; fares of public carriers; special fees for insurance certificates, permits, licenses, etc.; and state sales and use taxes. Field and specialty equipment will be billed at a daily, weekly or monthly rate, as needed for the project.

Other Expenses – Examples of other expenses are telecommunications charges, blueprints/plots, in-house copying and printing, software licensing fees, and data network fees.

**PAYMENT TERMS**

Invoices will be submitted monthly unless specifically detailed otherwise in an accompanying contract or signed proposal.

Invoices are due and payable upon their receipt. An interest charge of one and one-half percent (1-1/2%) of the invoice amount will be added automatically to each invoice if payment is not received within thirty (30) days after the date on the invoice. Thereafter, interest on the cumulative outstanding balance will be added at a rate of one and one-half percent (1-1/2%) per month. All payments received shall be applied to the oldest invoices first.

The **CLIENT** and **TURNER BUILDING SCIENCE & DESIGN, LLC (TBS)** hereby agree as follows:

**1. CONTRACT** - The Contract is the Proposal or Contract document that is signed and dated by TBS and the CLIENT and to which these Standard Conditions for Engagement are appended by reference.

**2. COMPENSATION FOR SERVICES AND PAYMENT TERMS** - The CLIENT agrees to pay TBS in accordance with the payment terms provided in the Contract.

Invoices will be submitted monthly unless specifically detailed otherwise in the accompanying contract or signed proposal.

Invoices are due and payable upon their receipt. An interest charge of one and one-half percent (1-1/2%) of the invoice amount will be added automatically to each invoice if payment is not received within thirty (30) days after the date on the invoice. Thereafter, interest on the cumulative outstanding balance will be added at a rate of one and one-half percent (1-1/2%) per month. All payments received shall be applied to the oldest invoices first.

### **3. CLIENT RESPONSIBILITIES**

*Project Requirements:* The CLIENT shall provide to TBS all criteria and information as to requirements for the Project including objectives, constraints, performance requirements, expendability and budgetary limitations; and furnish copies of all design and construction standards which the CLIENT will require to be incorporated into the Project.

*Client Representative:* The CLIENT shall designate in writing a person to act as the CLIENT'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT'S policies and decisions with respect to TBS's services for the Project.

*Existing Information:* The CLIENT shall provide TBS with all information available to the CLIENT pertinent to TBS's work under this Agreement. The CLIENT shall furnish to TBS, as required for performance of TBS's Basic Services, the following:

- Environmental assessment and impact statements;
- Property, boundary, easement, right-of-way topographic and utility surveys;
- Property descriptions;
- Zoning, deed and other land use restriction;
- Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and appropriate professional interpretations of all of the foregoing; and
- Other special data or consultations;

all of which TBS shall be entitled to use and rely upon with respect to the accuracy and completeness thereof, in performing services under this Agreement. The CLIENT shall assist TBS as necessary to obtain available pertinent information from Federal, State or local offices or from other engineers or others who have previously worked for the CLIENT on matters affecting this Project.

*Access:* The CLIENT shall acquire all necessary easements, rights of way, land takings and arrange for access to and make all provisions for TBS and its subconsultants to enter upon public and private property as required for TBS to perform its services.

*Review Documents:* The CLIENT shall examine all documents prepared for the Project by TBS; and at the CLIENT'S option, obtain advice from legal counsel, insurance counsel and other appropriate advisors, and advise TBS of any opinion or recommendations resulting from paid advice.

*Permits:* The CLIENT shall secure and maintain all necessary approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

*Notice:* The CLIENT shall give prompt written notice to TBS whenever he observes or otherwise becomes aware of any development that affects the scope or timing of TBS's services.

*Additional Work:* The CLIENT shall furnish, or direct TBS to provide necessary Additional Services.

*Costs:* The CLIENT shall bear all costs incident to compliance with the requirements of this Section 3.

**4. DOCUMENTS** - All reports, design drawings, field data and notes, laboratory test data, calculations, estimates and other documents that TBS prepares as instruments of service shall remain TBS's property. The CLIENT agrees that TBS's services are on behalf of and for the exclusive use of the CLIENT and that all reports and other documents furnished to the CLIENT or his agents shall be utilized solely for this project. These documents are not intended or represented to be suitable for reuse by CLIENT or others in connection with (a) the completion of the Project if TBS's agreement has been terminated or TBS otherwise is not involved in the Project; (b) extensions of the Project; and/or (c) any other project. Any reuse without written verification or adaptation by TBS for the specific purpose intended will be at CLIENT's sole risk and without any liability or legal exposure to TBS or its consultants. The CLIENT shall indemnify and hold harmless TBS, and its consultants, from any and all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle TBS to further compensation at rates to be agreed upon by CLIENT and TBS.

**5. RESTART** - If the Project is stopped for a period greater than 30 days, a restart fee will be required to compensate TBS for any necessary premium time, and for remobilization of staff and materials. Depending on the duration of the stoppage, an additional adjustment may be necessary to cover wage increases and general escalation.

Restart fee will be 10% of fee earned to date of stoppage, unless CLIENT and TBS agree on a different amount.

**6. CONSTRUCTION OBSERVATION SERVICES** - If TBS's construction observation services are included as part of the scope of services in the Contract, TBS will provide personnel to observe construction to ascertain that it is being performed, in general, in accordance with the plans and specifications.

TBS cannot provide its opinion on the suitability of any part of the work performed unless measurements and/or observations of that part of the construction are made by TBS personnel.

TBS's services do not make TBS a guarantor of the contractor's work, and the contractor will continue to be responsible for the accuracy and adequacy of all construction or other activities performed by the contractor. The contractor will be solely responsible for the methods of construction; supervision of personnel and construction; control of machinery; falsework, scaffolding, or other temporary construction aids; safety in, on, or about the job site; and compliance with OSHA regulations.

**7. REVIEW OF SHOP DRAWINGS** - If TBS's contract with the CLIENT so requires, TBS shall review (or take other appropriate action in respect of) Shop Drawings, samples and other data which Contractor(s) is (are) required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such review or other actions shall not extend to means, methods, techniques, sequences or procedures of manufacture (including the design of manufactured products) or construction, or to safety precautions and programs incident thereto. TBS'S review or other actions, as described above, shall not constitute approval of an assembly or product of which an item is a component, nor shall it relieve the Contractor(s) of (a) its (their) obligations regarding review and approval of any such submittals; and (b) its (their) exclusive responsibility for the means, methods, sequences, techniques and procedures of construction, including safety of construction.

**8. CONTRACTOR PERFORMANCE** - It is the CLIENT's responsibility to hire the Contractor, and it is the Contractor's responsibility to install and complete fully operable systems. The CLIENT agrees to pay TBS 2.5 times Direct Personnel Expense for all its troubleshooting work due to Contractor's inability to achieve satisfactory operation.

CLIENT shall hold harmless, defend and indemnify TBS, its officers, agents, employees and consultants, from any and all liabilities, claims, damages and suits arising out of the negligence of the CLIENT or its agents, or liability due to the negligence of any Contractor(s) performing any portion of the work and supplying any materials, or any other parties, except for any liability of TBS or its consultants due to the sole negligence of TBS, or its consultants.

**9. COST ESTIMATES** - Any estimates or opinions of project or construction costs are provided by TBS on the basis of TBS's experience and qualifications as an architect/engineer and represent its best judgment as an experienced and qualified architect/engineer familiar with the construction industry. Since TBS has no control over the cost of labor,

materials, equipment or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids or actual Project costs or construction costs will not vary from any estimates or opinions of costs prepared by TBS. Similarly, since TBS has no control over building operation and/or maintenance costs, TBS cannot and does not guarantee that the actual building or system operating or maintenance costs will not vary from any estimates given by TBS. No fixed limit of construction cost is established as a part of this Agreement.

**10. STANDARD OF CARE** - TBS's services will be performed in accordance with generally accepted practices of the Architects/Engineers providing similar services at the same time, in the same locale, and under like circumstances.

**11. SUSPENSION OF WORK** - The CLIENT may, at any time, by ten (10) day written notice, suspend further work by TBS. The CLIENT shall remain fully liable for and shall promptly pay TBS the full amount for all services rendered by TBS to the date of suspension of services plus suspension charges. Suspension charges shall include the cost of putting documents and analyses in order, personnel and equipment rescheduling or reassignment adjustments, and all other related costs and charges directly attributable to suspension.

If payment of invoices by the CLIENT is not maintained on a thirty (30) day current basis, TBS may, by providing a ten (10) day written notice to the CLIENT, suspend further work until payments are restored to a current basis. In the event TBS engages counsel to enforce overdue payments, the CLIENT shall reimburse TBS for all reasonable attorney's fees and court costs related to enforcement of overdue payments. The CLIENT shall indemnify and save harmless TBS from any claim or liability resulting from suspension of the work due to non-current payments.

**12. INSURANCES** - TBS is protected by Worker's Compensation Insurance and Employer's Liability Insurance. TBS will furnish certification upon written request. The CLIENT agrees that TBS will not be liable or responsible to the CLIENT for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

**13. PROFESSIONAL LIABILITY** - The CLIENT agrees that TBS's liability to Client and to Client's general or other contractors and subsequent owners of the property for damages attributable to TBS's negligent acts, errors, or omissions shall be limited to the sum of \$50,000. or to the total fee for services rendered by TBS, whichever is greater.

The CLIENT shall advise its general and other contractors of this limitation to TBS's liability, shall obtain their agreement to be bound by this limitation, and shall indemnify, defend, and hold TBS free and harmless from, (1) all damages, costs, and expenses, including attorneys' fees, in excess of this limitation, and (2) all damages, costs, and expenses, including attorneys' fees, attributable to allegations of defects or deficiencies in the project not shown to have been caused by TBS's fault or neglect.

**14. INDEMNIFICATION FOR HAZARDOUS MATERIALS** - The CLIENT agrees that TBS has not contributed to the presence of hazardous wastes, oils, asbestos or other hazardous materials that may exist or be discovered in the future at the site and that TBS does not assume any liability for the known or unknown presence of such materials.

Therefore, the CLIENT shall defend, indemnify, and hold harmless TBS, its consultants, subcontractors, agents and employees from and against all claims, damages, losses, and expenses including defense costs and lawyer's fees that result from the failure to detect or from the actual, alleged, or threatened discharge, dispersal, release, or escape of any solid, liquid, gaseous or thermal irritant, asbestos in any form, or contaminants including smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste, oil or other hazardous materials or pollutants. The CLIENT shall be liable under this paragraph for claims, damages, losses, and expenses including defense costs and attorney's fees, unless such claims, damages, losses and expenses are caused by TBS's sole negligence.

**15. WAIVER OF SUBROGATION** - The CLIENT and TBS waive all rights against each other and against the Contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance. The CLIENT and TBS shall each require similar waivers from their contractors, consultants and agents.

**16. SUCCESSORS AND ASSIGNS** - The CLIENT and TBS each binds himself, his partners, successors, executors, administrators and assigns, to the other party of the Agreement and to the partners, successors, executors, administrators and assigns, for such other party to all covenants of this Agreement.

Except as above, neither the CLIENT or TBS shall assign, sublet or transfer his interest in this Agreement without the written consent of the other party hereto.

Nothing in this paragraph shall prevent TBS from employing such independent consultants, associates, and subcontractors as he may deem appropriate to assist in the performance of the services of this Agreement.

**17. TERMINATION** - Either party may terminate this Agreement in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given 1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and 2) an opportunity for consultation with the terminating party before termination.

Upon termination, the CLIENT shall pay TBS for all work completed prior to the effective date of the termination. If compensation within the Agreement is based on a lump sum, the amount due TBS at termination shall be computed as the percentage complete of the work times the lump sum. If compensation is based on billing rates or actual costs, the amount due at termination shall be computed based on hours charged to the Project at termination times the appropriate ratios.