



**MASTER AGREEMENT BETWEEN OWNER AND CONSULTANT FOR PROFESSIONAL SERVICES**

This agreement made as of the 30th day of September, 2022

BETWEEN THE OWNER:

Russell County, Virginia  
Board of Supervisors  
137 Highland Drive, Suite A  
Lebanon, Virginia 24266

and the CONSULTANT:

Potesta & Associates, Inc.  
7012 MacCorkle Avenue, SE  
Charleston, West Virginia 25304

The purpose of this Master Agreement Between Owner and Consultant for Professional Services (civil, geotechnical, environmental, and mining engineering; permitting; site characterization/remediation; surveying; construction observation; SPCC Plans; CADD/GIS; health and safety plans; site design; and related services) is to establish contract terms and conditions and hourly rates under which individual projects will be performed. The rate schedule is presented in the attached Exhibit A. Terms and conditions are presented in Exhibit B. For each individual project Owner will provide Consultant with a general description of the services required. Consultant will then provide a proposal with a detailed scope of services and an estimated cost to perform the work based on the rates in Exhibit A. Upon agreement, Owner will provide a Notice to Proceed to Consultant for each individual project.


This Agreement is entered into as of the day and year first written above.

**OWNER:**

**CONSULTANT:**

**RUSSELL COUNTY, VIRGINIA**

**POTESTA & ASSOCIATES, INC.**

  
Name: \_\_\_\_\_  
Title: County Administrator

\_\_\_\_\_  
Name: Ronald R. Potesta  
Title: President

# EXHIBIT A

# POTESTA & ASSOCIATES, INC.

## 2022 RATE SCHEDULE

Principal .....	\$280/hour
Chief Engineer/Scientist .....	\$120 - \$235/hour
Senior Engineer/Scientist.....	\$75 - \$200/hour
Staff Engineer/Scientist .....	\$50 - \$130/hour
Engineer/Scientist .....	\$45 - \$95/hour
Professional Surveyor .....	\$70 - \$135/hour
Senior Technician .....	\$45 - \$95/hour
Technician.....	\$30 - \$65/hour
Two-Man Survey Crew.....	\$120/hour
Three-Man Survey Crew.....	\$165/hour
Senior CADD Designer .....	\$60 - \$115/hour
CADD Designer.....	\$40 - \$90/hour
Clerical Support .....	\$40 - \$110/hour

(Any changes in hourly rates will be made on January 1 of each year.)

NOTE: Engineer/Scientist includes engineer, scientist, technical designers, engineering associates, planners, health and safety specialists, and information technologists.

**POTESTA & ASSOCIATES, INC.**  
**FIELD EQUIPMENT RENTAL RATE SHEET**

Description	Rate		
	Per Unit	Day	Week <sup>1</sup>
1-Point Proctor Kit	N/A	\$20.00	\$75.00
12' Motorized Boat (includes fuel)	N/A	\$300.00	\$700.00
16' Motorized Boat (includes fuel)	N/A	\$500.00	\$2,000.00
2" Soak Ease Absorbent Tubes	\$11.00	N/A	N/A
22"x34" Internal Plots	\$0.75	N/A	N/A
24"x36" Ammonia Mylar	\$2.50	N/A	N/A
24"x36" Internal Plots	\$0.75	N/A	N/A
30"x42" Internal Plots	\$1.15	N/A	N/A
36"x48" Internal Plots	\$2.10	N/A	N/A
4" Soak Ease Absorbent Tubes	\$12.50	N/A	N/A
4-Gas Meter	N/A	\$75.00	\$250.00
Air Meter (Concrete)	N/A	\$25.00	N/A
Air Purifying Respirator with Cartridges	N/A	\$25.00	N/A
Air Velocity Meter	N/A	\$50.00	\$150.00
Asbestos Sampling Equipment	N/A	\$20.00	\$60.00
Automated Composite Sampler	N/A	\$95.00	\$350.00
Bladder Pump with Controller and Compressor	N/A	\$200.00	\$700.00
Bomb Water Sampler	N/A	\$25.00	\$75.00
Camcorder	N/A	\$50.00	\$200.00
Chlorine Meter	N/A	\$25.00	\$75.00
Company Vehicles - Car (includes fuel)	N/A	\$155.00	\$620.00
Company Vehicles - Truck/Van/SUV (includes fuel)	N/A	\$175.00	\$765.00
Company Vehicles - Truck/Van/SUV (includes fuel) with Trailer	N/A	\$205.00	\$1,025.00
Concrete Testing Equipment (slump, cone, temperature, wheelbarrow-excludes air meter)	N/A	\$25.00	N/A
Cone Penetrometer	N/A	\$75.00	N/A
CORMIX/CorHyd Software Utilization (per run)	\$300.00	N/A	N/A
Data Loggers (DO Study)	\$150.00	N/A	N/A
Depth and Velocity Flow Meter	N/A	\$80.00	N/A
DO Meter	N/A	\$25.00	\$75.00
DO Meter with Stirrer	N/A	\$50.00	\$100.00
Electro Fishing Equipment	N/A	\$100.00	\$350.00
Field Data Interface Unit (for Data Loggers)	N/A	\$50.00	N/A
Fish Rearing (per Tank)	N/A	\$5.00	N/A
Flow Cell for Water Quality Meter	N/A	\$20.00	\$50.00
Generator	N/A	\$30.00	\$120.00
Hach Hydrometer	N/A	\$85.00	N/A
Hand Auger	N/A	\$10.00	\$30.00
Handheld GPS	N/A	\$30.00	N/A
Inclinometer	N/A	\$500.00	N/A
Interface Probe	N/A	\$55.00	\$120.00
Internal Color Copies	\$1.00	N/A	N/A
Kemmerer Water Sampler	N/A	\$25.00	\$75.00

Description	Rate		
	Per Unit	Day	Week <sup>1</sup>
Laser Range Finder	N/A	\$20.00	N/A
Level Loggers	N/A	\$50.00	\$200.00
Level Loggers (Reader)	N/A	\$50.00	N/A
Lodging	N/A	\$90.00	N/A
Low-Flow DC Purge Pump with Controller	N/A	\$75.00	\$300.00
Manhole Penetration Camera	N/A	\$3.00	\$15.00
Manual Direct-Push Sampler	N/A	\$50.00	\$200.00
Microscopic Evaluation Laboratory Supplies	\$5.00	N/A	N/A
Nets/Aquatic Samplers/Miscellaneous Equipment	N/A	\$50.00	\$150.00
Nuclear Gauge	N/A	\$60.00	\$200.00
Opacity Kit	N/A	\$10.00	N/A
Other	Cost + 12%	Cost + 12%	N/A
Other Boat Rental	Cost + 12%	Cost + 12%	Cost + 12%
Oversize BlueLines	\$2.40	N/A	N/A
Ponar Sampler	N/A	\$25.00	\$75.00
Petroleum Soil Field Test Kit	\$35.00	N/A	N/A
PH/Temperature/Conductivity Meter	N/A	\$75.00	\$250.00
pH/Temperature/Conductivity Meter/DO/ORP Meter	N/A	\$125.00	\$500.00
PID/FID	N/A	\$100.00	\$400.00
Pressure Gauges	N/A	N/A	\$50.00
PVC Bailer (2")	N/A	\$5.00	N/A
PVC Bailer (3")	N/A	\$10.00	N/A
Sample Storage (Monthly)	\$30.00	N/A	N/A
Sludge Sampler	N/A	\$20.00	\$75.00
Small Row Boat	N/A	\$125.00	\$300.00
Soil Resistivity Meter	N/A	\$50.00	\$150.00
Speedy Moisture Gauge	N/A	\$25.00	N/A
State Change Logger	N/A	N/A	\$100.00
State Change Reader	N/A	\$50.00	N/A
Sub-Centimeter GPS Equipment	N/A	\$400.00	N/A
Sub-Meter GPS Unit	N/A	\$150.00	\$500.00
Surface Velocity Meter (SVR)	N/A	\$90.00	N/A
Survey Equipment (excludes GPS)	N/A	\$65.00	N/A
Temperature Loggers	N/A	\$10.00	\$35.00
Temperature Loggers (Reader)	N/A	\$50.00	N/A
Treatability Study Equipment	N/A	\$200.00	\$800.00
Turbidity Meter	N/A	\$25.00	\$75.00
Vehicle Mileage (if daily rates are not used)	IRS Rate + 12%	N/A	N/A
Water Level Indicator	N/A	\$35.00	\$75.00
Whale Pump System	N/A	\$35.00	\$100.00

(Any changes in rates will be made January 1 of each year.)

<sup>1</sup> Weekly rental rate implies calendar week.

**POTESTA & ASSOCIATES, INC.**  
**FIELD SUPPLY RATE SHEET**

Description	Rate	
	Per Unit	Day
55-Gallon Steel Drum	\$75.00	N/A
Asbestos Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Plastic Bags, Etc.	N/A	\$20.00
Benthic Survey Supplies (Per Site Per Day) Forms, Containers, Ethyl Alcohol, Nitrile Gloves, Flagging, Distilled Water, Decon Supplies, Marking Utensils, Plastic Bags	\$35.00	N/A
Bentonite (50 lb. Bag)	\$15.00	N/A
Bladder Pump Sampling Supplies (Bladders, Grab Plates, Tubing) - Per Well	\$50.00	N/A
Discharge Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc.	N/A	\$35.00
Disposable Bailers 3' (1.5" diameter)	\$8.00	N/A
Disposable Bailers 3' (0.75" diameter)	\$5.00	N/A
Disposable Bailers 7' (1.5" diameter)	\$12.50	N/A
Fish Survey Supplies (Per Site Per Day) Buckets, Waders, Bottles, Formalin, Ethyl Alcohol, Forms, Marking Utensils, Plastic Bags	\$35.00	N/A
Groundwater Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc.	N/A	\$35.00
GW Filters	\$17.50	N/A
HGM Stream Assessment Supplies Tape, Clinometer, Densimeter, Diameter Tape, Flagging, Quadrat, Etc.	N/A	\$25.00
Soil Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc.	N/A	\$35.00
Stream Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc.	N/A	\$35.00
Stream Delineation Supplies Hip Chain, Clinometer, Flagging, Forms, Etc.	N/A	\$20.00
Survey Supplies Hubs, Stakes, Flagging, Iron Pins, Monuments, Marking Paint, Traffic Control	N/A	\$25.00
Wetland Delineation Supplies Flagging, Forms, Reference Materials, Plastic Bags, Etc.	N/A	\$20.00
Other	Cost + 12%	N/A

*(Any changes in rates will be made January 1 of each year.)*



## REVISED STANDARD TERMS AND CONDITIONS FOR RUSSELL COUNTY BOARD OF SUPERVISORS

1. Potesta & Associates, Inc., hereinafter referred to as POTESTA, is an Equal Opportunity Employer and is in compliance with the Drug-Free Workplace Act of 1988 and governmental requirements relating to Right-To-Know regulations. The engineering and consulting services of POTESTA will be performed on an hourly basis for all time rendered to the project, unless the project is quoted for a lump sum, including project scoping by professional, technical, and clerical personnel in accordance with the attached hourly rate schedule. All invoice charges are based on and are payable in U.S. dollars.
2. Services performed by POTESTA under this Agreement 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. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.
3. Unless stated otherwise, any cost estimate presented in the attached proposal is for budgetary purposes only and is not a fixed lump-sum price. The actual cost of POTESTA's engineering and consulting services and all expenses may be less than that estimated; accordingly, only the cost incurred will be invoiced. If at any time during the progress of the work it appears that the estimated cost will be exceeded, Client will be informed immediately. However, unless written notification is received to stop work, POTESTA will continue working on the project to completion and will invoice Client for all engineering and consulting services and expenses incurred.
4. These terms are subject to and incorporate the provisions of POTESTA's attached proposal. In the event of any conflict, the terms of the accompanying proposal shall govern.
5. Invoices will be submitted periodically as required (but not more frequently than every two (2) weeks) unless charges for such periods are minimal, in which event an invoice will be submitted when total charges exceed \$500.00, or when the work is completed, whichever occurs first. Invoices are due and payable within 30 days from the date of invoice. All delinquent charges are subject to a service charge of 1½ percent per month or a fraction thereof. Should Client fail to pay any invoice within 45 days of its date, POTESTA may, upon 3 days' written notice to Client, stop work and recover from Client payment for all work executed. *Clients requiring specific invoice formats or accounting backup (copies of timesheets, copies of receipts or invoice support data, etc.) will be invoiced for those associated costs; these costs are not included in our proposal and will be invoiced in addition to the approved proposal costs.*

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6. Client agrees to limit POTEESTA's liability to Client and to all construction contractors and subcontractors on the project due to POTEESTA's professional negligent acts, errors, or omissions, such that the **total aggregate liability of POTEESTA to all those named shall not exceed \$50,000 or POTEESTA's total fee** for all expenses and services rendered on this project, whichever is greater.
7. POTEESTA shall indemnify and hold harmless the Client, its officers, directors, shareholders and employees (collectively, "Client Indemnities"), from and against those liabilities, losses, damages, and costs (including reasonable attorney's fees where recoverable by law) that Client is legally obligated to pay as a result of third party claims, to the extent caused by the intentional or negligent act, error, or omission of POTEESTA or anyone for whom POTEESTA is legally responsible, subject to any limitations of liability contained in this Agreement.

Client shall indemnify and hold harmless POTEESTA, its officers, directors, shareholders and employees (collectively, "Client Indemnities"), from and against those liabilities, losses, damages, and costs (including reasonable attorney's fees where recoverable by law) that POTEESTA is legally obligated to pay as a result of third party claims, to the extent caused by the intentional or negligent act, error, or omission of the Client or anyone for whom the Client is legally responsible, subject to any limitations of liability contained in this Agreement.
8. Time required for POTEESTA personnel to travel between POTEESTA's office and the site (or other destination applicable to the project) is charged in accordance with the attached hourly rate schedule.
9. POTEESTA expenses shall be charged according to the attached Field Supply and Equipment Rate Sheet. External expenses, such as airfare, subcontracted services, etc., shall be charged at direct cost (including taxes) plus a twelve percent (12%) surcharge to the project. A per diem (daily food allowance) of \$35.00 per day will be charged for all personnel required by the work to remain away from their normal residence. For those working out of the office area, but not spending the night, an allowance for lunch (\$6.50 maximum) and, if arriving back after 7:30 p.m., for dinner (\$17.50 maximum) may be charged. Lodging will be charged at \$90.00/night, except in limited availability areas where it will be charged at direct cost plus a twelve percent (12%) surcharge.
10. Specialized equipment purchased with Client's approval specifically for the project will become Client's property upon completion of the work. The purchase price and maintenance cost of such equipment shall be charged to Client at cost plus twelve percent (12%).
11. Client acknowledges that POTEESTA's reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, permit applications and other similar



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documents are instruments of professional service, not products. Although ownership of such documents normally is retained by POTEESTA, they nonetheless shall, in this instance, become the property of Client upon Client's payment in full of all POTEESTA invoices. Client recognizes that no such documents should be subject to unauthorized reuse; that is, reuse without written authorization of POTEESTA to do so. Such authorization is essential because it requires POTEESTA to evaluate the documents' applicability given new circumstances, not the least of which is passage of time. Accordingly, in return for POTEESTA's relinquishment of ownership, Client agrees to waive any claim against POTEESTA and defend, indemnify and hold POTEESTA harmless from any claim or liability for injury or loss allegedly arising from unauthorized reuse of POTEESTA's instruments of service. Client further agrees to compensate POTEESTA for any time spent or expenses incurred by POTEESTA in defense of any such claim, in accordance with POTEESTA's prevailing fee schedule and expense reimbursement policy. Client agrees that POTEESTA may retain one set of documents for their files and use.

12. Client recognizes that conclusions regarding the assessed condition(s) of the site do not necessarily represent a warranty that all portions of the site are of the same quality. Specific conditions may not be observable or readily interpreted from available documents, but may become evident at a later date. POTEESTA will be responsible for data it collects, its interpretations and recommendations, but shall not be responsible for the interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys or explorations and the information and recommendations developed by POTEESTA are based solely on the information available from such borings, surveys and explorations.
13. The responsibility of POTEESTA's field representative(s) is to make observations and conduct field tests. This work does not include supervision or direction of the work of the contractor, his employees, or agents. The contractor should be so advised. The contractor should also be advised that neither the presence of POTEESTA's field representative nor the observation and testing by POTEESTA shall excuse him in any way for defects discovered in his work. Any review and/or observation of the contractor's performance by POTEESTA does not include the contractor's safety measures on or near the construction site. The contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Unless specifically stated in POTEESTA's proposal, construction review and/or observation is not included in the scope of services. As indicated in Item 13 above, POTEESTA should be allowed to perform construction observation services; a separate proposal will be prepared after construction documents are available.
14. Soil, rock, water and/or other samples obtained from the project site are the property of Client. POTEESTA will preserve such samples for no longer than ninety (90) calendar days after the issuance of any document that includes the data obtained from them, unless other

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arrangements are mutually agreed upon in writing. Further storage or transfer of samples will be made at Client's expense. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from POTEESTA's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures. Due to the risks to which POTEESTA is exposed, Client agrees to waive any claim against POTEESTA, and to defend, indemnify and hold POTEESTA harmless from any claim or liability for injury or loss arising from POTEESTA's containing, labeling, transporting, testing, storing or other handling of contaminated samples unless employees or agents of POTEESTA are grossly negligent in containing, labeling, transporting, testing, storing or other handling of contaminated samples. Client also agrees to compensate POTEESTA for any time spent and expenses incurred by POTEESTA in defense of any such claim, with such compensation to be based upon POTEESTA's prevailing fee schedule and expense reimbursement policy.

15. Unless otherwise agreed, Client or Owner will furnish right-of-entry on the land and/or facilities for POTEESTA to make the planned borings and other explorations and perform necessary sampling. POTEESTA will take reasonable precautions to minimize damage to said land or facilities from use of POTEESTA's equipment and operations. If Client or Owner desires POTEESTA to restore the land or facilities to their former condition, this will be accomplished at the expense of the Client or Owner.
16. In the execution of Client's work, POTEESTA will take reasonable precautions to avoid damage or injury to subterranean structures or utilities. The Client and Owner agree to hold POTEESTA harmless for any damages to subterranean structures or utilities which are not called to POTEESTA's attention, or are not correctly shown on the plans furnished.
17. Client agrees to advise POTEESTA about the presence of any known hazardous substances or any known condition(s) existing in, on, or near the site presenting a potential danger to human health or the environment. If during performance of services, any unforeseen hazardous substances or other unforeseen conditions or occurrences, in, on, or near the site presenting a potential danger to human health or the environment are encountered which, in the judgment of POTEESTA, significantly affect or may affect the services or the recommended scope of services, POTEESTA will promptly notify Client thereof. Subsequent to that notification, Client and POTEESTA agree to pursue one of the following options:
  - a. If practicable, in the judgment of POTEESTA, the original scope of services will be completed in accordance with the procedures originally intended in POTEESTA's proposal for services.

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- b. The scope of services will be modified and the estimate of charges revised to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated therein.
  - c. The services for the work in POTEESTA's proposal will be terminated, effective on the date specified in writing by POTEESTA, and POTEESTA shall recover any extra charges associated with the previously unforeseen conditions or occurrences, as well as any charges up to such date for the originally proposed services.
18. Neither the Client nor POTEESTA may delegate, assign, sublet or transfer their duties or interest, as described in the Standard Terms and Conditions and accompanying proposal, without the written consent of the other party. Unless stated otherwise, POTEESTA's proposal is firm for 90 days.
19. In the event that a dispute should arise relating to the performance of the services to be provided under the Standard Terms and Conditions and the proposal, it is agreed that the dispute shall be mediated. Should mediation fail and litigation result, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, including staff time, court costs, attorney's fees, and other claim-related expenses.
20. The law of the Commonwealth of Virginia will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this Agreement. All legal proceedings shall be filed in the Commonwealth of Virginia.
21. POTEESTA may submit to Client an opinion of the probable cost required to construct work. POTEESTA is not a construction cost estimator or construction contractor, nor should POTEESTA's rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. POTEESTA's opinion will be based solely upon their own experience with construction. This requires POTEESTA to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which POTEESTA has no control. Given the assumptions which must be made, POTEESTA cannot guarantee the accuracy of their opinions of cost, and—in recognition of that fact—Client waives any claim against POTEESTA relative to the accuracy of POTEESTA's opinion of probable cost.

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22. Client or POTEESTA may terminate this Agreement upon fourteen (14) days' written notice to the other for reasons included in the notice. In the event such termination becomes necessary, the party effecting termination shall so notify the other party in writing, and termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause therefore, Client shall within thirty (30) calendar days of termination remunerate POTEESTA for services rendered and costs incurred, in accordance with POTEESTA's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination, as well as those associated with termination itself, such as demobilizing, modifying schedules, reassigning personnel, and so on. Costs shall include those incurred up to the time of termination, as well as those associated with termination and post-termination activities, such as demobilization, decontaminating and/or disposing of equipment, disposal and replacement of contaminated consumables, and so on. Should the contract be terminated by the Client for breach of contract by POTEESTA or should the contract be terminated for convenience by POTEESTA, the Client shall not be responsible for any services including services associated with the termination itself, such as demobilizing, modifying schedules, and reassigning personnel, or any costs associated with the termination and post termination activities, such as demobilization, decontaminating and/or disposing of equipment, and disposal and replacement of contaminated consumables.
23. Client shall not be liable to POTEESTA and POTEESTA shall not be liable to Client for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or POTEESTA, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
24. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and POTEESTA shall survive the completion of the services hereunder and the termination of this Agreement.
25. POTEESTA shall indicate to Client the information needed for rendering of services hereunder, and Client shall provide to POTEESTA such information as is available to Client. Client recognizes that it is not possible for POTEESTA to assure the sufficiency of such information, either because it is not possible to do so, or because of errors or omissions which may have occurred in assembling the information. Accordingly, Client waives any claim against POTEESTA, and agrees to defend, indemnify and hold POTEESTA harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to POTEESTA by Client. Further, Client agrees to compensate POTEESTA for any time spent or expenses incurred by POTEESTA in defense of any such claim, with such compensation to be based upon POTEESTA's prevailing fee schedule and expense reimbursement policy.

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26. This Agreement shall not create any rights or benefits to parties other than Client or POTEESTA. No third-party shall have the right to rely on POTEESTA's opinions rendered in connection with POTEESTA's services without POTEESTA's written consent and the third-party's agreement to be bound to the same terms and conditions as Client.
27. If, for any reason, any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
28. For engagements that we accept for other than regular clients, our normal practice is to require a retainer or security deposit in advance of our performing any significant services. On occasion, such a deposit is required at a later time due to payment irregularities. The engagement letter will state whether an advance has been required before undertaking a particular representation.
29. POTEESTA will not have any obligation to issue a report or other document, or communicate our research, analyses, or conclusions, and will not have any obligation to appear for or provide written or oral testimony or evidence at trial, deposition or elsewhere, until Client's account is paid in full. POTEESTA will have no liability to the Client, or any other person, by reason of not issuing a report, appearing for, and/or providing testimony or other evidence because of the Client's failure to pay all amounts due POTEESTA, and the Client agrees to indemnify POTEESTA against any such liability.

30. **CERTIFICATIONS**

- 31.1 For purposes of this Agreement, "certification" means to state or declare a professional opinion based on the standard of performance set forth in Item 2 above.
- 31.2 POTEESTA shall not be required to execute certificates that would (i) result in POTEESTA having to certify, guarantee or warrant the existence of conditions whose existence POTEESTA cannot reasonably ascertain under the existing Services; (ii) require knowledge, services or responsibilities beyond the Services; or (iii) require POTEESTA to make a certification that would exceed what may reasonably be expected from firms of similar experience and expertise providing services of a similar nature. In addition, Client agrees not to make resolution of any dispute with POTEESTA or payment of any amount due to POTEESTA in any way contingent upon POTEESTA executing such certificate.

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- 31.3 A professional's certification in no way relieves other parties from meeting their respective requirements imposed by contract or other means, including commonly accepted industry standards and practices. If required as a part of its Services, POTESTA will provide a written report stating whether, in POTESTA's professional opinion and based on periodic site visits, the construction work complies generally with the Contract Documents.