

RESOLUTION NO. R-29-2015

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT FOR SERVICES AND SCOPE OF WORK WITH
TRUE NORTH CONSULTANTS, INC. FOR A
LIMITED PHASE II ENVIRONMENTAL SITE ASSESSMENT FOR TIF 4**

WHEREAS, the VILLAGE OF BENSENVILLE (hereinafter "VILLAGE") is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the VILLAGE is empowered to make all agreements and contracts and to undertake other acts as necessary in the exercise of its statutory powers; and

WHEREAS, it is sometimes necessary in furtherance of its statutory functions for the VILLAGE to contract for various services required by the VILLAGE; and

WHEREAS, for this purpose, the VILLAGE has determined that it is reasonable, necessary, and desirable to enter into a Contract for Services and Scope of Work with True North Consultants, Inc., which Contract is attached hereto and incorporated herein by reference as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

SECTION ONE: The recitals set forth above are incorporated herein and made a part hereof.

SECTION TWO: The Village President is hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Village Clerk is hereby authorized to attest thereto, the Contract attached hereto and incorporated herein by reference as Exhibit "A."

SECTION THREE: This Resolution shall take effect immediately upon its passage and approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 24th day of February, 2015.

APPROVED:



Frank Soto, Village President

ATTEST:



Ilsa Rivera-Trujillo, Village Clerk

Ayes: **Janowiak, Jarecki, O'Connell, Ridder, Wesseler**

Nays: **None**

Absent: **Bartlett**



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February 18, 2015

Mr. Michael Cassady
Village Manager
Village of Bensenville
12 S. Center Street
Bensenville, IL 60106

**Re: Limited Phase II ESA Proposed Scope of Work
Proposed Hotel and Restaurant Development
Northwest Corner of Grand Avenue and County Line Road
Bensenville, Illinois
Proposal #TI5-034**

True North Consultants, Inc. (True North) is pleased to provide this proposal to perform limited Phase II Environmental Site Assessment (ESA) activities at the vacant property located at the northwest corner (NWC) of Grand Avenue and County Line Road in Bensenville, Illinois (the *property*). The following sections of this proposal present background information, scope of services, estimated costs, schedule, and limitations.

BACKGROUND

The *property* was reported to have been originally used as an Illinois Department of Transportation (IDOT) borrow pit for the construction of the local tollway system. Seasonal disposal activities appear to have started as early as 1964 and continued through 1972 when the *property* was permitted (Permit 1973-25) by the Sexton Filling and Grading Contractors Corporation to operate a solid waste disposal site known as County Line & Grand. The *property*, consisting of 50 acres, was permitted to accept commercial and industrial wastes generated from the construction, landscaping and sanitary/refuse industries. The specific length of the *property's* operation could not be determined, but it appears that the *property* ceased operations in the 1980s. The *property* operated as the Legend's Golf Course. The IEPA indicated that the *property* completed post-closure care and issued the post-closure care certification on November 30, 2005. Based on the completion of the post-closure care, the *property* no longer has a permit and the IEPA is not involved in the operation. Therefore, the IEPA does not regulate the use of the *property*.

The Village of Bensenville (Village) is in negotiations to sell a portion of the *property* (approximately 6 acres) to a developer. The proposed redevelopment of the *property* will include



two hotels, restaurant and associated parking. The bank financing the purchase of the *property* requires limited environmental site assessment activities prior to financing the transaction.

Based on this history of the *property* and financing requirements, the Village requested a proposal to evaluate the *property* to identify potential environmental impacts associated with the redevelopment of the *property*.

SCOPE OF SERVICES

The purpose of the limited Phase II ESA is to confirm the absence or presence of contamination associated with the potential environmental concerns through a limited subsurface investigation. This scope of work was developed in conjunction with the bank’s environmental consultant, EPS Environmental Services, Inc. (EPS). Specifically, True North proposes:

- Advance four soil borings to a depth of approximately 20 feet below ground surface (bgs) to evaluate soil, groundwater (if encountered), and soil gas quality at the *property*.
- Advance two soil borings to a depth of approximately 50 feet bgs to evaluate soil, groundwater (if encountered), and soil gas quality at the *property*.

Task I: Subsurface Investigation

True North will subcontract an environmental drilling contractor to perform environmental drilling services. The drilling contractor will be responsible for public utility locates prior to drilling activities. All private utilities must be located by the property owner prior to drilling activities.

Up to twelve soil borings will be advanced at the *property*. The following is a description of proposed soil borings locations, depths and proposed analytical parameters.

Boring	Location	Proposed Depth (feet bgs)	Analytical Parameters
B1 – B3	Within Proposed Building Footprints of Buildings 2, 3 and 4	20	VOCs, SVOC, PCBs, Pesticides/Herbicides/RCRA Metals and pH
B4	To Be Determined in Field	20	VOCs, SVOC, PCBs, Pesticides/Herbicides/RCRA Metals and pH
B5-B6	To Be Determined in Field	50	VOCs, SVOC, PCBs, Pesticides/Herbicides/RCRA Metals and pH

Soil borings will be advanced to the depths proposed above, or refusal, whichever is encountered first. The final boring locations will be chosen based on addition information received from the utility locations and any other additional information received prior to commencement of field activities.

True North will field screen soil samples from each sample interval using a photoionization detector (PID). True North will collect one sample from each soil boring for submittal to the laboratory for analysis. A second sample will be collected from the 50 foot soil borings from within the fill material. Sample selection will be based on field screening results, the presence of migratory pathways, the presence of fill material, or other observations of impacts made during field work.

The following table summarizes the soil characterization analytical parameters based on the potential environmental concerns at the *property*:

Compound or Group of Compounds	USEPA Analytical	Method Identification Matrix
Volatile Organic Compounds (VOCs)	5035/8260	Soil/Groundwater
Semi-Volatile Organic Compounds (SVOCs)	8270	Soil/Groundwater
Polychlorinated Biphenyls (PCBs)	8280	Soil/Groundwater
Pesticides/Herbicides	8081/8051	Soil/Groundwater
RCRA Metals	6010B/7471	Soil/Groundwater
Toxicity Characteristic Leachate Procedure (TCLP) Metals	1311/6010/7470	Soil/Groundwater
Methane	3C	Soil Gas

Laboratory analytical results will be compared to the most stringent Soil Remediation Objectives (SROs) described in 35 Illinois Administrative Code (IAC) 742, *Tiered Approach to Corrective Action Objectives (TACO)*. The TCLP RCRA metals analyses will only be performed to evaluate potential soil component to groundwater ingestion exposure pathway exceedences.

Groundwater is expected to be encountered during the investigation, groundwater samples (grab) will be collected from all six soil boring locations f and submitted to the laboratory from temporary wells, for the purposes of obtaining a qualitative measure of contaminants in groundwater at the *property*. The groundwater samples will be analyzed for the parameters identified above.

In addition to soil and groundwater samples being collected from the *property*, three soil gas samples will be collected for methane. These samples will be collected from with the proposed footprints of the two hotel and restaurant buildings. The samples will be collected utilizing summa canisters from temporary shallow gas implants.

Soil and groundwater samples will be placed in ice filled coolers, and delivered under proper chain-of-custody to a NELAC accredited laboratory for chemical analyses. A trip blank may be submitted with the samples.



Costs to collect and laboratory analyze up to eight soil, six groundwater and three methane samples are included in the cost proposal.

Based on the nature of the *property*, all soil cuttings will be drummed for proper off-site disposal upon receipt of soil analytical results.

Task 2: Project Reporting

True North shall compile all field screening data and laboratory results in summary report format to document the investigation findings. The summary report shall include field sampling locations, analytical tables, laboratory data, field testing data, and any pertinent historical and regulatory information used to formulate and support the investigation findings. True North will also include recommendations for additional actions, if necessary. The results of this investigation will be suitable for inclusion in any future submittals to the IEPA. Additionally, True North will provide a reliance letter for the developer's lender to utilize.

PROJECT COSTS

True North proposes to conduct the above scope of services provided above in accordance with the following estimated costs:

Service	Quantity	Units	Rate	Total
<i>Task 1: Phase II Site Investigation</i>				
Professional Services (sampling labor)	3 (est.)	Daily	\$1,400	\$4,200
Field Equipment, Materials, Vehicle	3 (est.)	Daily	\$600	\$1,800
Environmental Laboratory				
Soil Samples (VOCs)	8	EA	\$85	\$1,120
Soil Samples (SVOCs)	8	EA	\$200	\$1,600
Soil Samples (RCRA Metals)	8	EA	\$100	\$800
Soil Samples (Pest/Herb)	8	EA	\$325	\$2,600
Soil Samples (PCBs)	8	EA	\$75	\$600
Soil Samples (TCLP RCRA Metals)	4	EA	\$165	\$660
Soil Samples (pH)	8	EA	\$12	\$96
Groundwater Samples (VOCs)	6	EA	\$85	\$280
Groundwater Samples (SVOCs)	6	EA	\$225	\$1,350
Groundwater Samples (RCRA Metals)	6	EA	\$100	\$600
Groundwater Samples (Pest/Herb)	6	EA	\$325	\$1,950
Groundwater Samples (PCBs)	6	EA	\$75	\$450
Soil Gas Sample (Methane)	3	EA	\$250	\$750
Environmental Drilling	1	EA	\$9,600	\$9,600
Drum Disposal	8 (est.)	EA	\$250	\$2,000

**Task 2: Project Reporting**

Summary Report	1	LS	\$3,500	\$3,500
Project Management, Correspondences, Meetings	3 (est.)	HR	\$125	\$375
Estimated Total Cost of Services				\$34,121

NOTES:

(est.) – Estimated quantity. True North will only invoice client for actual time, materials and samples expended on project.

Soil and groundwater analytical results can be expedited to four (4) days for a 25% surcharge per sample.

Should the Client request a change in the scope-of-work, or should circumstances render the current estimate invalid, a new estimate will be prepared and mutually agreed to in writing before further work proceeds. Written authorization to proceed will form a binding contract and indicates your acceptance of our Terms and Conditions. Any changes to our Terms and Conditions must be agreed to in writing by both parties prior to your authorization to proceed.

SCHEDULE

The following timeline of approximately 30 business days is proposed:

- True North can schedule field activities within approximately two weeks (limited by availability of drilling contractor) of authorization to proceed.
- Three days are estimated to complete the drilling and sampling activities.
- Laboratory analytical results will be available within approximately seven business days of sampling activities unless expedited for an additional cost.
- A written report summarizing the results of the assessment will be provided within ten business days of receipt of all laboratory results.

LIMITATIONS AND QUALIFICATIONS

The Client and their respective subcontractors shall be responsible for complying with the terms of health and safety plans, Federal, and State requirements applicable to this project. True North shall not be responsible for the health and safety of Village of Bensenville or *property* occupants' employees, subcontractors, or agents thereof while performing on-site activities.

This proposal is based on field work performed in Level D personal protection (i.e., steel-toed boots, hard hats, safety glasses, and gloves). True North will postpone field work and notify client immediately if field conditions warrant an increase in personal protection.



True North requests that the Village provide all available utility and underground system drawings beyond those identified by the utility authority prior to the initiation of subsurface work.

True North requests that the Village assist True North with locating soil borings within proposed building footprints prior to sampling activities.

This proposal does not include any additional work, inclusive of additional site investigation activities, remedial activities, and meeting/correspondence that may be required for Site closure through Illinois Environment Protection Agency (IEPA) for review.

This proposal does not include any permitting fees, review or closure fees, or other fees that may be assessed by local, State, or Federal government agencies during the performance of environmental work on-Site.

This proposal is valid for a period of 45 days from the date of this proposal. In the event that authorization is received after 45 days from the date of this proposal, True North reserves the right to resubmit a new cost estimate for approval to reflect any additional costs associated with the proposed scope of work, if necessary.

TERMS OF AGREEMENT

If this proposal meets with your approval, please sign the attached service agreement and return it to our office via mail, fax or e-mail. This agreement for professional services represents a contract between True North Consultants, Inc. and the Client. Our Terms and Conditions are hereby incorporated as part of this agreement.

True North appreciates the opportunity to offer this proposal for pre-acquisition environmental due-diligence services. If you have any questions, please contact me at 224-387-6125.

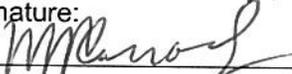
Regards,

TRUE NORTH CONSULTANTS, INC.

Brian S. Mihelich, CHMM
Senior Vice President



True North Proposal # T15-034 is hereby accepted and the conditions attached and outlined herein agreed to:

CLIENT	TRUE NORTH CONSULTANTS, INC.
By: <i>Michael J. Cassady, Village Manager</i>	By: Brian S. Mihelich
Signature: 	Signature: 
Date: <i>February 24, 2015</i>	Date: February 18, 2015

SCHEDULE OF TERMS & CONDITIONS

1.0 PROPOSAL ACCEPTANCE

The following terms and conditions ("Terms") shall apply to and are an integral part of the attached proposal between True North Consultants, Inc. (True North) and the Client named in the attached proposal ("Client"). Client's acceptance of the proposal includes acceptance of the Terms and any terms and conditions proposed by the Client will be deemed to materially alter the Terms and are hereby objected to and rejected by True North. Acceptance of this proposal, including acceptance of the Terms, shall occur upon the notification of True North by Client, in writing or orally, to commence performance in accordance with the proposal and the Terms.

2.0 WARRANTY

The Client recognizes that subsurface conditions may vary from those observed at locations where borings, surveys or explorations are made, and that site conditions may change with time. Data, interpretation, and recommendations by True North will be based solely on information available to True North. True North is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed. Client acknowledges that whenever a Project involves hazardous or toxic materials and/or investigations of chemicals in the environment, there are inherent uncertainties involved (such as limitations on laboratory analytical methods, variations in subsurface conditions and the like) that may adversely affect the results of the Project, even though the services are performed with skill and care. True North shall perform the services consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the same time the services are performed. No other warranty, expressed or implied, is made.

3.0 SUBCONTRACTED AND OTHER SERVICES

- 3.1 True North will select reputable subcontractors for test borings and/or other explorations or services based on oral or written competitive prices. The contractor's invoices shall be billed in accordance with our proposal. Nothing in this paragraph shall require that services or equipment be obtained through competitive bidding or be available from multiple sources.
- 3.2 On occasion, True North engages the specialized services of individual consultants or other companies to participate in a project. When considered necessary, the cost of such services will be billed in accordance with our proposal.

4.0 SITE ACCESS AND SITE CONDITIONS

Client will grant or obtain free access to the site for all equipment and personnel for True North to perform the work set forth in this Agreement. The Client will notify any and all possessors of the project site that Client has granted True North free access to the site. True North will take reasonable precautions to limit damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur and the correction of such damage is not part of this Agreement unless so specified in the Proposal. The Client is responsible for the accuracy of locations for all subterranean structures and utilities. True North will take reasonable precautions to avoid known subterranean structures, and the Client waives any claim against True North, and agrees to defend, indemnify, and hold True North harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate True North for any time spent or expenses incurred by True North in defense of any such claim with compensation to be based upon True North's prevailing fee schedule/expense reimbursement policy.

5.0 BILLING AND PAYMENT

Invoices shall generally be submitted every four weeks for services performed during the previous four weeks. Payment shall be due within 30 days of invoice date. If Client objects to all or any portion of any invoice, Client will so notify True North in writing within fourteen (14)

calendar days of invoice receipt, identify the cause of disagreement, and pay within thirty (30) days that portion of the invoice, if any, not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid. Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. Client will pay an additional charge of 1-1/2 (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by the Client to True North per True North's current fee schedules. In the event Client fails to pay True North within thirty (30) days after invoices are rendered, Client agrees that True North has the right to suspend this Agreement, without incurring liability to Client, after giving seven (7) days written notice to Client.

6.0 DOCUMENTS AND ELECTRONIC FILES

- 6.1 Written Documents: Any letters, reports, or documents prepared by us for Client, are the instruments of our consulting and engineering services. These services provided by us are solely for Client's use for the project and site described in our proposal. Any documents prepared by us for the client shall not, in whole or in part, be disseminated or conveyed to another party, nor used by another party in whole or in part, without prior written consent from True North. The Client shall, to the fullest extent permitted by law, waive any claim against True North, and indemnify, defend, and hold True North harmless for any claim or liability for injury or loss allegedly arising from any third-party reliance on True North's instruments of service without True North's specific authorization to do so.
- 6.2 Electronic Files: The Client hereby grants permission for True North to use information and data provided by the Client, including electronic records produced or provided by the Client in the completion of the project. The Client also grants permission to True North to release True North documents electronically to Consultants, Contractors, and Vendors as required in the execution of the project.

7.0 INSURANCE

True North maintains Workmen's Compensation Insurance as required by State law and General Liability Insurance for bodily injury and property damage with an aggregate limit of \$1,000,000 per occurrence. True North will furnish certificates of such insurance upon request. In the event the Client desires additional coverage of this type, True North will, upon the Client's written request, obtain additional insurance (if possible) at the Client's expense. Our liability to the Client for bodily injury or property damage arising out of work performed for the Client for which legal liability may be found to rest upon us, other than for professional errors or omissions, shall be limited to our General Liability Insurance coverage.

8.0 ALLOCATION OF RISK

- 8.1 Limitation of Liability: Client agrees to limit True North's liability to Client, and to any other person or entity, for any claim arising from, or alleged to arise from any acts, errors or omissions in the performance of services under this Agreement whether such claim sounds in negligence, breach of contract, strict liability, or other legal theory, except for willful misconduct or gross negligence and including any legal fees or costs awarded under this Agreement, to an aggregate limit of the amount of fees paid to True North under this Agreement, or \$50,000, whichever is greater. If Client prefers not to limit our professional liability to this sum, we shall waive this limitation upon Client's written request, provided that Client agrees to pay for this waiver at a negotiated fee. Client's request for this option must be made at the time Client accepts our proposal. In the event Client makes a claim

SCHEDULE OF TERMS & CONDITIONS

against us for any act arising out of the performance of our professional services, and fails to prove such claim, then Client agrees to pay all legal and other costs incurred by us in defense of such claim.

- 8.2 Waiver of Consequential Damages: True North and Client agree to waive any claim against each other for consequential damages.
- 8.3 Indemnification: True North shall indemnify and hold harmless Client from and against any and all claims, damages, or liability arising from the negligent performance of services under this Agreement by True North, including injuries to employees of True North. Client shall defend, indemnify, and hold harmless True North from and against any and all claims, damages, or liability arising from or related to Hazardous Materials existing at the Project Site prior to the commencement of True North's services under this Agreement, unless caused by the sole negligence or willful misconduct of True North.
- 8.4 Continuing Agreement: The obligations of this section shall survive notwithstanding termination of this agreement. In the event that Client requests that True North provide additional services, Client's obligations under this section shall apply to such additional services as if such additional services had to be performed as part of this Agreement.

9.0 CHANGES

- 9.1 Unforeseen Site Conditions: Client reserves the right to make reasonable changes in the work to be performed after acceptance of this Agreement. Client understands that unforeseen site conditions may require changes in the Scope of Work to be performed.
- 9.2 Unauthorized Changes: If changes are made in True North's work products by Client or persons other than True North, and these changes affect our work, any and all liability against True North arising out of such changes is waived and Client assumes full responsibility for such changes unless Client has given us prior notice and have received from us written consent for such changes.
- 9.3 Client Requested Changes: Upon receipt of a change requested by Client, True North will obtain price quotations from our subcontractors and shall provide Client with a quotation of the cost of having the change performed, and any increase in contract time caused by the change. Client shall authorize the requested change by amending the contract price and contract time.

10.0 NOTIFICATION OF HAZARDS

It is Client's duty to notify True North of any information Client has with respect to the existence or suspected existence of Biological Pollutants, Hazardous Materials, oil, or asbestos in the environment, including but not limited to the air, soil, and water at the site. Client will advise True North immediately of any information which Client receives regarding the existence of any such Hazardous Materials or conditions at the site which might present a threat to human health and safety or the environment or impact True North's work products.

11.0 BIOLOGICAL POLLUTANTS

True North's scope of work, unless specifically outlined in our written scope of services, does not include the investigation or detection of the presence of any Biological Pollutants in or around any structure. Client agrees that True North will have no liability for any claim regarding bodily injury or property damage alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants, in or around any structure. In addition, Client will defend, indemnify, and hold harmless Consultant from any third party claim for damages alleged to arise from or be caused by the presence of or exposure to Biological Pollutants in or around any structure, except for damages arising from or caused by True North's sole negligence.

12.0 SITE CONTROL, CONFIDENTIALITY AND DISCLOSURE

True North does not assume, by virtue of performing work on or near the site, the responsibility or liability for any aspect or condition of the site that may now or later exist to be discovered. In particular, we do not assume the responsibility to report to any governmental or regulatory agency the existence of any conditions of the site that may present a threat to human health, safety or the environment. True North will not intentionally divulge information regarding the proposal, our services or the report, and which is not in the public domain, except to Client or those whom Client designates. Notwithstanding the foregoing, Client understands that we will comply with judicial orders and applicable laws and regulations regarding the reporting to the appropriate public agencies of potential dangers to the public health, safety or the environment.

13.0 RCRA COMPLIANCE

Nothing contained in this Agreement shall be construed or interpreted as requiring True North to assume the status of a generator, storer, treater, transporter, or disposal facility within the meaning of the Resource Conservation and Recovery Act of 1976, as amended, or within the meaning of any similar Federal, State, or local regulation or law.

14.0 DELAYS

Delays not the fault of True North or contractors shall result in an extension of the schedule equivalent to the length of delay. If such delays result in additional costs to True North, the total project cost shall be equitably adjusted by the amount of such additional costs.

15.0 DISPUTE RESOLUTIONS

Any claims or disputes between the Client and True North arising out of the services provided by True North or out of this Agreement shall be submitted to non-binding mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. The Client and True North agree to include a similar mediation agreement with all contractors, subconsultants, subcontractors, suppliers and fabricators, providing for mediation as the primary method of dispute resolution among all parties. The laws of the State of Illinois will govern the validity of this Agreement, its interpretation and performance.

16.0 MISCELLANEOUS

- 16.1 Controlling Law: The law of the State of Illinois will govern the validity of these Terms, their interpretation and performance, as well as the contract entered into between the parties to which these Terms relate. If any part of this Agreement shall be held illegal, unenforceable, void, or voidable by any court of competent jurisdiction, each of the remainder of the provisions shall nevertheless remain in full force and effect as a separate contract and shall in no way be affected, impaired, or invalidated.
- 16.2 Severability/Integration/Modification: This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties, and any negotiations, proposals, or oral agreements are intended to be integrated herein and to be superseded by this Agreement. This Agreement may not be modified or altered, except by an Agreement in writing and signed by authorized representatives of both parties hereto, which specifically refers to this Agreement.
- 16.3 Waste Manifests: If during remedial construction activities waste manifests are required, Client shall provide an authorized person to sign manifests or agrees to provide True North with a written limited power of attorney to sign manifests.

END OF TERMS AND CONDITIONS

REVISED: January 19, 2015