

## جدول مختصر مصارف دیوار با بل ها و قرارداد های آن

ردیف	اسم کمپنی	مبلغ مجموعی	کود قرارداد	تعداد صفحه
1	قرارداد سروی با شرکت VIKA	12,\$750	G5675	2 صفحه
2	قرارداد مشوره تخنیکي با KCE	\$64,838.75	APR2019 - C	21 صفحه
3	قرارداد انجام حفر، نمونه خاک و تست با شرکت ECS	\$12,250	CBE#LZ26807012022	29 صفحه
4	قرارداد اعمار دیوار با شرکت KADCON	\$1,586,000	A101-2017	8 صفحه
5	قسط اول قرارداد اعمار دیوار با شرکت KADCON	\$396,500	1019-05	1 صفحه



سفارت جمهوری اسلامی افغانستان  
واشنگتن دی سی - ایالات متحده امریکا

EMBASSY of THE ISLAMIC REPUBLIC  
of AFGHANISTAN  
Washington DC - United States of America

د افغانستان اسلامي جمهوریت سفارت  
واشنگتن دي سي - د امریکا متحده ایالات

شماره: ۳۸۴

تاریخ: ۱۹ سرطان ۱۳۹۸

موضوع: ارسال مجدد قرارداد های سروی، مشوره تخنیکي و قرارداد جدید حفاری و تست خاک  
ضمایم: ۴۷ ورق

د اهمیت درجه

مهم: عاجل و مهم  
محرم:  
عادي:

به ریاست محترم عمومی مالی و اداری،

با تقدیم احترامات فایقه:

به تعقیب نامه شماره ۱۸۵۲۵۱ مورخ ۳۰ ثور و نامه های ماقبل آن احتراماً می نگارد که:

دو قرارداد ضمیمه به تاریخ ۱۸ اپریل مطابق ۲۹ حمل ۱۳۹۸ در مشوره و همکاری با وکیل حقوقی به امضا رسید. قرارداد اول با شرکت سروی جهت تعیین حدود اربعه و تشخیص مالکیت دیوار مخروبه به مبلغ ثابت ۸۸۰۰ هشت هزار و هشتصد دالر امریکایی و قرارداد دوم با شرکت انجینیری جهت انجام مشوره تخنیکي و انجام بررسی های لازم در مورد دلایل و عوامل تخریب دیوار به مبلغ ۵۰۰۰۰ پنجاه هزار دالر عقد گردید. در قرارداد ها تذکر رفته است که هزینه هر دو قرارداد در صورت تغییر حجم و ماهیت کاری قابل تغییر (افزایش و یا کاهش) می باشد. مطابق نامه مورخ ۵ اپریل مشاور حقوقی سفارت که کاپی آن ضمیمه می باشد، وکیل حقوقی سفارت شرایط مطروحه در قرارداد را مرسوم دانسته و امضای قرارداد را برای جلوگیری از خسارات بیشتر به سفارت ضروری تلقی نموده است.

همچنان باید خاطر نشان گردد که مطابق روال معمول تدارکات در ایالات متحده امریکا، ارایه آفر توسط شخص یا شرکت ارایه کننده و پذیرش آن توسط شخص یا نهاد تقاضا کننده برای بیشتر خدمات مانند مشوره در امور ساختمانی و انجام سروی، حکم قرارداد را دارد و به همین دلیل هر سه سند ضمیمه منجیث قرارداد رسمی محسوب می گردد. همچنان قابل ذکر است که مطابق ورق تشریحی ضمیمه شده با هر قرارداد، به وکیل حقوقی سفارت از جانب سفارت افغانستان صلاحیت داده شد که این قراردادها را به منظور حفظ محرمت یافته های شرکت های اجرا کننده به نیابت از سفارت امضا نماید.

همچنان قرارداد سوم با شرکت ارایه دهنده خدمات حفاری و تست خاک به امضا رسید. هر سه شرکت متذکره کار محوله را به پیش برده و خواهان دریافت حق الزحمه می باشند. با توجه به در احجام و ماهیت برخی قراردادی ها، هزینه های متذکره افزایش یافته و بل های مربوطه ضمیمه هر قرارداد می باشد.

در عین حال با توجه به حقوقی سیاسی شدن قضیه پاک کاری و پایدار سازی دیوار مخروبه، سفارت به تداوم مشوره تخنیکي شرکت KCE بیش از پیش نیازمند است. در صورتیکه شرکت متذکره به دلیل عدم دریافت هزینه ها قرارداد خود را لغو نماید، این عمل به عنوان عدم تعهد و اراده دولت افغانستان برای رسیدگی به قضیه تلقی گردیده و اعتبار دولت



2341 Wyoming Ave. NW Washington DC 20008

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Facebook: Embassy of Afghanistan Washington DC Twitter: Embassy of AFG



سفارت جمهوری اسلامی افغانستان  
واشنگتن دی سی - ایالات متحده امریکا

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د افغانستان اسلامي جمهوریت سفارت  
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افغانستان را به شکل جدی خدشه دار می سازد و از لحاظ سیاسی و حقوقی نیز دولت افغانستان بازنده اصلی این قضیه خواهد بود.

طوری که در مکاتبات قبلی شماره ۱۲۱ مورخ ۲۰ حمل ۱۴۶۰، ۱۳۹۸ مورخ ۲۹ حمل ۱۳۹۸، ۶۲ مورخ ۱۵ حمل ۱۳۹۸، و ۱۸۵ مورخ ۱۱ ثور ۱۳۹۸ نیز تذکر رفت، وجوه لازم در حسابات سفارت موجود نیست و نیاز است که وجوه متذکره به شکل عاجل به حساب بانکی سفارت انتقال گردد. نامه مورخ ۲۵ جون ۲۰۱۹ وکیل سفارت تذکر داده است که بل های شرکت های ارایه دهنده خدمات به سفارت برای بیشتر از ۶ هفته پرداخت نگردیده و لازم است که دولت افغانستان به زودترین فرصت بل های متذکره را پرداخت نماید.

خواهشمند است در زمینه پروسس سه سند ذیل و ارسال وجوه لازمه همکاری نموده امتنان بخشند.

- ۱- قرارداد سروی با شرکت VIKI شماره G5675 به مبلغ مجموعی ۸۸۰۰ دالر امریکایی و اضافه کاری ۳۹۵۰ دالر امریکایی، مبلغ مجموعی ۱۲۷۵۰ دالر امریکایی. (شرح دلایل اضافه کاری در سند ضمیمه شده به قرارداد).
- ۲- قرارداد مشوره تخنیکي با KCE شماره APR 2019-C به مبلغ مجموعی ۵۰۰۰۰ پنجاه هزار دالر امریکایی. مطابق بل های شرکت متذکره مبلغ مجموعی ۶۴۸۳۸.۷۵ دالر باید به شرکت متذکره پرداخت گردد (شرح اضافه کاری در سند ضمیمه شده به قرارداد).
- ۳- قرارداد انجام حفاری، نمونه برداری خاک و تست خاک با شرکت ECS شماره CBE#LZ26807012022 به مبلغ مجموعی ۱۲۲۵۰ دالر امریکایی.

با احترام

  
رویا رحمانی  
سفیر کبیر و نماینده فوق العاده

کاپی ها:

- ریاست محترم دفتر مقام محترم وزارت (بدون ضمیمه)،
- دفتر معینیت محترم اداره و منابع (بدون ضمیمه)،
- دفتر معینیت محترم سیاسی (بدون ضمیمه)،
- ریاست محترم پنجم سیاسی (بدون ضمیمه)،
- مدیریت محترم املاک و حفظ و مراقبت (با ضمیمه)



لست ضمایم:

موضوع	صفحه
۱- ضمیمه ۱، قرارداد سروی، بل های سروی، و شرح اضافه کاری	۲
۲- ضمیمه ۲، قرارداد مشوره تخنیکي، و بل های مشوره تخنیکي	۲۱
۳- ضمیمه ۳، قرارداد حفاری، نمونه برداری و تست خاک	۲۹
۴- ضمیمه ۴، نامه های شرکت حقوقی به ارتباط ضرورت عقد قرارداد با شرکت KCE و شرکت VIKa به شکل عاجل برای جلوگیری از خسارات بیشتر و آمادگی برای دفاع در محکمه به دلیل احتمال قوی رفتن قضیه به محکمه توسط وکیل حقوقی همسایه و همچنان ضروری بودن استخدام شرکت انجینیری برای نظارت از پروژه بر مبنای روال معمول نزد ادارات دولتی District of Columbia و همچنان ضرورت پرداخت بل های معوقه شرکت های متذکره	۳۷
۵- ضمیمه ۵، مکاتبات از طریق ایمیل مبتنی بر ضروری بودن امضای قراردادهای مشوره تخنیکي و قرارداد سروی و اجازه رسمی سفارت به وکیل حقوقی به منظور امضای قراردادهای متذکره به نیابت از سفارت	۴۴



شماره قرارداد: G5675

**قرارداد کننده:** شرکت حقوقی DLA Piper به نیابت از سفارت جمهوری اسلامی افغانستان و با اجازه رسمی از سفارت \*

**قراردادی:** شرکت سروی جیومتری VIKA

**موضوع قرارداد:** ارائه خدمات سروی، تعیین حدود اربعه، و (اضافه کاری) تعیین موقعیت خدمات شهری مانند آب، برق، گاز، تیلیفون و فاضلاب

**مبلغ قرارداد:** ۸۸۰۰ هشت هزار و هشتصد دالر امریکایی (با احتساب اضافه کاری مبلغ ۱۲۷۵۰ دالر امریکایی)

نوت: در آغاز کار پروژه بر اساس تصمیم جمعی تیم کاری سفارت و مبتنی بر مشوره حقوقی وکیل سفارت، به منظور حفظ محرمت یافته های شرکت ساختمانی مشوره دهنده (KCE) و شرکت سروی (VIKA) باید یافته های هر دو شرکت تحت شرایط "Attorney Client Privileged" (مخصوص و محفوظ بین وکیل و موکل) قرار می گرفت. هدف اساسی این بود که در صورتیکه همسایه و وکیل حقوقی ایشان مسئله را به محکمه رجعت بدهند، یافته های مشاورین سفارت بر علیه سفارت قابل استفاده نباشد و در صورتیکه سفارت تصمیم بگیرد برای دریافت غرامت همسایه را به محکمه بکشاند، امکان استفاده موثر و مفید از معلومات جمع آوری شده وجود داشته باشد.

به منظور تحقق امر فوق و حفظ محرمت نتایج یافته ها، لازم بود تا قرارداد متذکره را شرکت حقوقی به نیابت از سفارت امضا نماید، در حالیکه تمامی مراودات بعدی به شمول پرداخت مصارف به قراردادی ها مستقیماً توسط سفارت صورت می گیرد. به همین منظور قرارداد ضمیمه با شرکت VIKا توسط آقای Frederick L. Klein که وکیل حقوقی سفارت می باشد به امضا رسیده است.

در عین حال باید خاطرنشان ساخت روال معمول تدارکات در ایالات متحده امریکا برای خدمات ابتدایی مانند این پروژه، ارائه آفر توسط شخص یا شرکت ارائه کننده و پذیرش آن توسط شخص یا نهاد تقاضا کننده می باشد و ایجاب و قبول بین طرفین حکم قرارداد را ایفا می نماید. به همین دلیل سند ضمیمه منحت قرارداد رسمی محسوب می گردد.

اضافه کاری: بعد از غور و بررسی و به دلایل متعدد که در مکاتبات قبلی تذکر رفت، تیم کاری سفارت تصمیم اتخاذ نمود تا به منظور جلوگیری از ضیاع منابع دولتی، به جای اجرای اقدامات پایدارسازی موقتی با هزینه بین ۱۰۰۰۰۰ تا ۲۳۰۰۰۰۰ دالر امریکایی، مستقیماً کار بازسازی دایمی دیوار را آغاز نماید. به همین منظور لازم بود تا از عمق ۴۰ فوت هم در ملکیت سفارت و هم در ملکیت همسایه خاک نمونه برداری و تست گردد. به همین منظور لازم گردید تا مکان و موقعیت دقیق خدمات شهری مانند لین برق، آب، گاز، تیلیفون، فاضلاب و ... در هر دو ملکیت مشخص گردد. تشخیص، خط اندازی ساحوی و تهیه نقشه های تخصصی از موقعیت خدمات فوق باعث افزایش حجم کاری شرکت سروی و افزایش هزینه ها گردید. البته شرح بیشتر موضوع متذکره در سند ضمیمه که توسط شرکت ارائه گردیده می باشد.

- ضمیمه ۱۸ ورق -



## ATTORNEY WORK PRODUCT; PRIVILEGED AND CONFIDENTIAL

April 2, 2019

Email: Frederick.klein@dlapiper.com  
Phone: 202-799-4101Islamic Republic of Afghanistan  
c/o DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004

#G5675

Attention: Frederick Klein

Re: *Afghanistan Embassy*  
*Lot 20, Square 2522*  
*Washington, DC*  
*VIKA Proposal #G5675*

Dear Fred,

VIKA Maryland, LLC is pleased to submit herewith our proposal to provide Survey services on the above referenced project located in Washington, DC. The specific scope of services is outlined below.

PROJECT ASSUMPTIONS

In preparing the proposal, the following is assumed:

1. The lump sum fees in this proposal are based upon all work for each task being accomplished during a continuous operation and one set of final drawings will be prepared for the project. VIKA Maryland, LLC reserves the right to renegotiate this contract should the work for a task be phased or interrupted.
2. Your office will take the lead in overall project coordination and furnishing all site access required to perform this work.
3. Any services that you may require and are not included within the Scope of Services will be conducted on an hourly basis or pre-negotiated lump sum fee, once you have provided authorization through an Additional Services Agreement, which will be considered an Addendum to this contract.
4. All meetings and consultations with client, title/land use attorney, other consultants and agencies (unless otherwise noted herein), are to be conducted on an hourly basis and billed at VIKA Maryland, LLC hourly billing rates included in Attachment A herewith.
5. VIKA's policy on release of digital/electronic files or disks is that they be released only to your designee who is a licensed engineer or surveyor, and only after they have provided the appropriate release form to VIKA.

SCOPE OF SERVICES

1. *Survey to Mark (S)* ..... \$8,800

Under this line item, we will prepare an official "Survey to Mark" survey of Lot 20, Square 2522, that will be recorded in the Office of the D.C. Surveyor. It is anticipated that the DC Office of the Surveyor will require us to establish the boundary lines along Wyoming Avenue from 24<sup>th</sup> Street to 23<sup>rd</sup> Street and establish 24<sup>th</sup> Street from Wyoming Avenue to Kalorama Road.



## VIKA Maryland, LLC

20251 Century Boulevard, Suite 400 \* Germanstown, Maryland 20874 \* 301.916.4100 Fax 301.916.2262  
Tysons, VA \* Germanstown, MD \* Washington, DC  
www.vika.com



Islamic Republic of Afghanistan  
c/o DLA Piper LLP (US)

Re: *Afghanistan Embassy*  
*Washington, DC*  
*VIKA Proposal #G5675*

April 2, 2019  
Page 2 of 2

Due to the nature of this site and current conditions, we will be required to use our laser and scanning equipment in order to safely locate the walls, garage and other site features. This survey will require us to meet with the Supervisor at the DC Office of the Surveyor, review our boundary determination and address any comments that may arise. Once the boundary determination is reviewed and approved by the DC Office of the Surveyor, we are required to prepare a color coded worksheet of the area. We are also required to prepare a "Certified Survey" of our final determination. Both the color worksheet and certified survey will be recorded in the Office of the Surveyor for the District of Columbia. This task includes all field work, office work and recording fees.


#### EXTRA WORK

Any work required in addition to that outlined above will be billed on an hourly basis according to our current rate schedule shown below, or a negotiated lump sum fee. Extra work will include, but not be limited to the following: engineering, planning or landscape designs, entitlement studies, rezoning plans and documents, final engineering documents, signalization plans/traffic studies, traffic control signage or pavement marker plans, design coordination or permit acquisition with State and Local jurisdictions, phasing plans, excavation plans, dewatering plans, specifications, structural design, wetland studies or delineations, subdivision or condominium plats, detailed topographic survey and below grade utility as-builts, utility sweeps, construction management, parking studies/plans, geotechnical engineering, materials testing, soil borings or test pit stakeout, tree locations, recordation or filing fees, environmental site assessment, hazardous materials delineation, permitting analysis, earthwork estimate calculations, sanitary sewer capacity or water model analysis, acoustical engineering, archeological studies, off-site culvert analysis, FAA coordination/approval, and NOI permits.

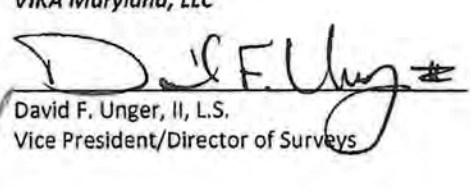
If this proposal and the enclosed Attachments A, B & B1, and C, dated April 2019 are acceptable and outline our complete agreement, please signify your acceptance by signing in the space provided and returning a copy to our office.

We appreciate the opportunity to present this proposal and look forward to continuing working on this project with you.

Sincerely,  
*VIKA Maryland, LLC*

  
Harry L. Jenkins, L.S.  
Senior Division Surveying Manager  
HLJ/cs

Approved:  
*VIKA Maryland, LLC*

  
David F. Unger, II, L.S.  
Vice President/Director of Surveys

#### ACCEPTANCE

We, Islamic Republic of Afghanistan, in consideration of the terms and conditions of this proposal which are fully set forth herein, including Attachments A, B & B1, and C, dated April 2019, do hereby accept these documents as our complete agreement.

Accepted By: HAHM - DLA PIPER LLP (US) Date: 4-18-19  
F.L. Klein attorney  
Print Name: \_\_\_\_\_ Title: Partner

Enclosures: Attachments A, B, B1, and C dated April 2019  
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صفحه ۲ از ۲



ضمیمه ۱



The following is a listing of VIKa's professional services rates for professional, messenger, and reprographic services. These rates will remain in effect for one (1) year following the date of the contract, after which time they may be adjusted to reflect our current labor and overhead costs.

PROFESSIONAL SERVICES

Expert Research & Testimony.....	\$340
Principal.....	\$260
Principal Associate.....	\$240
District of Columbia Registered Surveyor.....	\$240
Senior Division Surveying / Engineering / Planning Manager.....	\$230
Director of Planning / Landscape Architecture / Engineering / Land Surveying.....	\$230
Senior Planning Manager.....	\$200
Senior Associate.....	\$220
Associate.....	\$180
Senior Project Manager.....	\$180
Project Manager.....	\$140
Assistant Project Manager.....	\$120
LIDAR / Scanner Project Manager.....	\$180
Senior Project Engineer/LA/Planner/Surveyor.....	\$180
Senior Engineer/LA/Planner/Surveyor.....	\$150
Project Engineer/LA/Planner/Surveyor.....	\$120
Design Engineer/LA/Planner/Survey Technician.....	\$90
Senior CAD Designer.....	\$120
Project CAD Designer.....	\$100
CAD Designer.....	\$80
Senior Administrative Assistant.....	\$90
Administrative Assistant.....	\$70
Survey Crew.....	\$175
Survey Crew 1 Man Robotic.....	\$145
Survey Crew 2 Man Robotic/UAS.....	\$250
LIDAR / Scanner Crew.....	\$220
LIDAR / Scanner Night Crew.....	\$300
LIDAR / Hazard Scanner Crew.....	\$400
LIDAR / Scanner / BIM / UAS Survey Tech.....	\$130
2 Man Survey Night Crew.....	\$240
3 Man Survey Night Crew.....	\$270
1 Man Disaster / Hazard Survey Crew (Robotic).....	\$280
2 Man Disaster / Hazard Survey Crew.....	\$320
3 Man Disaster / Hazard Survey Crew.....	\$340
Certified Arborist.....	\$180
LEED Consultant.....	\$150
SUE Survey/Design Crew.....	\$170
DUE 1, Dry Utility Senior Project Manager.....	\$140
DUE 2, Dry Utility Project Manager.....	\$120
DUE 3, Dry Utility Designer / CAD.....	\$100
DUE 4, Dry Utility Administrative Assistant.....	\$80
DUE 5, Dry Utility Project Principal / Electrical P.E.....	\$200

DIGITAL/REPROGRAPHIC SERVICES

## PRINT CHARGES FOR LARGE FORMAT DOCUMENTS (cost per square foot)

CAD Plot / Copy - B/W on Bond.....	\$ 0.40
CAD Plot / Copy - B/W or Color on Ink Jet Bond.....	\$ 1.95
CAD Plot / Copy - B/W or Color on Ink Jet Mylar.....	\$ 3.95
CAD Plot / Copy - Color graphic images on Ink Jet Bond.....	\$ 9.00
CAD Plot / Copy - Color graphic images on Ink Jet Glossy Presentation.....	\$10.00

## PRINT CHARGES FOR DOCUMENTS UP TO 11" X 17" (cost per page)

Digital Laser Print - B&W and Color.....	\$ 1.20
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## SCANNING CHARGES (cost per square foot)

Scan to File B/W.....	\$ 0.50
Scan to File Color.....	\$ 0.75

## MOUNTING (cost per square foot)

Foam Core.....	\$ 5.25
Gator Board.....	\$ 6.25

## FOLDING (cost per square foot)

Folding Bond prints.....	\$ 0.25
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MESSENGER AND OTHER SERVICES

Messenger service, filing fees, and reprographic services not listed above will be billed at cost plus 10%. Printing and record copy fees charged to VIKa by utility companies will be billed as a direct cost to the client. Leasing of special equipment will be at direct cost plus 10%.



VIKA



These Standard Terms and Conditions are incorporated into the foregoing agreement or proposal (the "Agreement") between VIKA Virginia, LLC; VIKA Maryland, LLC and/or VIKA Capital, LLC (VIKA), as the case may be and its client ("Client") for the performance of engineering, surveying, planning, and/or landscape architectural services ("VIKA Services"). These Standard Terms and Conditions are fully binding upon Client just as if they were fully set forth in the body of the Agreement.

### 1.0 PERIOD OF OFFER

Any proposal by VIKA to provide professional services must be accepted within ninety (90) days of the date of the proposal. This ninety (90) day period may only be extended if VIKA agrees in writing. Additionally, VIKA shall have the option of canceling a VIKA proposal at any time prior to the original or extended expiration date of the proposal as long as there is no fully executed Agreement in effect at the time of such cancellation. In the event a Client accepts a VIKA proposal by executing and delivering either the signed original or copy to VIKA, the signed VIKA proposal and the attachments expressly incorporated therein by reference shall constitute the entire Agreement between the parties ("Agreement") with respect to that Project.

The VIKA proposal and these terms and conditions shall also apply and be binding even if the Client has not returned an executed copy but has requested that VIKA begin work, and receives work from VIKA performed in accordance with this Agreement.

### 2.0 SCOPE OF AGREEMENT

VIKA, for the fee noted in the Agreement, shall only be obligated to perform those services expressly described in the Scope of Services. In no event does VIKA agree to perform any of the following services:

- a. To certify as to the correctness of any document which was prepared by another entity.
- b. To be responsible for the correctness of any drawings prepared by VIKA unless it is properly sealed by a professional currently employed by VIKA.
- c. To provide legal, accounting, insurance, or other consulting services not listed in VIKA's current Professional Services Summary available at [www.vika.com](http://www.vika.com).
- d. To assure Client of favorable or timely comment or action by any governmental entity on the submission of any construction documents, land use or feasibility studies, appeals, petitions for exceptions or waivers, or other requests or documents of any nature whatsoever.
- e. To assure Client that consulting services pertaining to off-site considerations or requirements take into account circumstances other than those clearly visible and known from on-site work.
- f. To furnish or certify to the actual location (or characteristics) of any portion of a utility which is not visible from the surface.
- g. Geotechnical consulting or structural engineering services.
- h. Wetlands and/or any environmental services.

Client shall also inform VIKA of any special criteria or requirements related to VIKA's Services and shall furnish VIKA with all available existing information, including reports, plans, drawings, surveys, deeds, and other documents related to VIKA's Services. VIKA shall not be responsible for errors, omissions, or additional costs arising out of its reliance upon such information or materials furnished by Client.

### 3.0 CLIENTS RESPONSIBILITY

Client agrees to provide full reliable information regarding its requirements for the Project and, at its expense, shall furnish VIKA with the information, surveys and reports, if any, listed on attached Schedule B-1. In addition, Client agrees to provide, VIKA at Client's expense and in a timely manner, the cooperation of its personnel and such additional information with respect to the Project, as may be ascertained from time to time, by Client in connection with the Project or VIKA's work on the Project ("VIKA's Work"). Client shall designate a Project Representative authorized to act on behalf of Client with respect to the Project and/or this Agreement and agrees to render any decisions promptly to avoid unreasonable delay to the Project and the performance of VIKA's Work. It will be the responsibility of the Client to obtain permission for VIKA, its employees and Subcontractors, to enter onto the Project property to perform Engineering and Surveying Services in accordance with the scope of this Agreement.

### 4.0 REIMBURSABLE EXPENSES

Unless otherwise specified in the Agreement, Client shall reimburse VIKA for all expenses, and specified subcontract services reasonably, incurred by VIKA in connection with the performance of professional services for Client, plus ten percent (10%), except for printing services, which will be reimbursed in accordance with Attachment A.

Such expenses may include, but are not limited to, the following: transportation expenses; messenger services, meals and lodging in connection with travel; long distance telephone charges; data processing expenses; extraordinary computer expenses; photographic expenses; rental of special equipment; filing and inspection fees paid by VIKA on behalf of Client to appropriate regulatory agencies; additional insurance coverage requested by Client; overtime required by Client; renderings and models; the cost of obtaining bids or proposals from other Contractors or Consultants when completed at the request of Client; fees and expenses and subcontract services of special Consultants and other out-of-pocket expenses incidental to performance of VIKA's Services. VIKA may submit invoices for reimbursable expenses separately from invoices for services.

### 5.0 ADDITIONAL SERVICES

In the event the Client requests VIKA to perform services not specifically described in Scope of Services, Client agrees to compensate VIKA for such services in accordance with the hourly rate schedule set forth in Attachment A of this Agreement unless a written agreement has been signed by both parties indicating the basis of such additional changes. Unless specifically included in the Scope of Services, additional services will include, but not be limited to, the following: off-site design, construction specification preparation, revisions to previously prepared plans, cost estimating, construction inspection, completion certifications, changes in the Scope of Services and revisions requested by the Client, Owner, Architect, or necessitated by a change in the approving agencies' codes, policies, or guidelines.

### 6.0 CLIENT'S ORAL DECISIONS

Client, or any of Client's directors, officers, partners, employees, or agents having apparent authority from Client, may orally: (a) make decisions relating to VIKA Services or the Agreement; (b) request a change in the Scope of VIKA Services under the Agreement; or, (c) request the performance by VIKA of additional services under the Agreement and in such event, such decisions or requests are binding on Client. Client may from time to time, and at any time, limit the authority of any or all persons to act orally on Client's behalf under this Paragraph 6, by giving seven (7) days advance written notice to VIKA.

### 7.0 DUTIES AND STANDARD OF CARE

VIKA agrees to provide those professional engineering, surveying, and/or landscape architectural services as agreed to in the Scope of Services. Additional services and consultation may be performed if requested, subject to an agreed-upon revision in the Scope of Services and authorized additional compensation. Services will be performed in accordance with generally accepted principles of civil engineering, land surveying, and landscape architectural practice, and in a manner consistent with the level of professional care and skill ordinarily exercised by members of these professions for similar projects. No other warranty, expressed or implied, is made. Client shall communicate these standard contract terms and conditions of this Section 7 to each and every third party to whom the Client transmits any part of VIKA's plans, specifications, details, calculations, or reports.

VIKA shall make reasonable effort to meet current Fair Housing and Americans with Disabilities Act (ADA) requirements with respect to this proposal; however, due to the ambiguity of the rules and regulations associated with this law, VIKA does not guarantee total compliance.

If a situation arises that causes VIKA to believe compliance with Client's directives would be contrary to sound engineering practices, would violate laws, regulations or codes, or will expose VIKA to legal claims or charges, VIKA shall so advise Client. If VIKA's professional judgement is rejected, VIKA shall have the right to terminate its Services in accordance with the provisions of Section 20.0, below.

### 8.0 CONSTRUCTION REVIEW

Adequate observation by qualified personnel of site construction is considered essential for successful completion and performance of projects. The Client shall provide adequate site observation, inspection and materials testing services for all matters in which it uses VIKA throughout the duration of site construction. Unless specifically noted in the Scope of Services, the professional services of VIKA do not extend to, or include the review or site observation of, the Contractor's work. It is agreed that visits to the job site by the designer or his/her field representative at intervals appropriate to the stage of construction is for the purpose of becoming familiar with the progress and general quality of the construction work, and is not to be construed as construction observation or inspection services, and shall not excuse the Contractor from any deficiencies discovered in his/her work.



It is further agreed that VIKA will not be responsible for job or site safety on the Project except for its own personnel and will not be held responsible for any Contractor's failure to observe or comply with the Occupational Health and Safety Act of 1970 as amended to date, or any state, county or municipal law of similar import or intent.

Client or its Agent/Representative shall review VIKA's work promptly after it is performed and made available to Client or its Agent/Representative. Thereafter, Client and/or its Agent/Representative shall promptly notify VIKA in writing about any errors, omissions, and/or questions. Any damage resulting from the failure of the Client or its Agent/Representative to notify VIKA of any errors or omissions that Client or its Agent/Representative knew, or reasonably should have known about, shall be the sole responsibility of the Client and Client waives any claims against VIKA with respect to such matters and indemnifies VIKA for all costs incurred by it resulting from such matter.

It is expressly understood and agreed that VIKA shall not have control of and shall in no event be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions in connection with the Project, or for the acts or omissions of any Contractor, Subcontractor, or other persons performing work for the Project, and Client shall indemnify VIKA and hold VIKA harmless from and against any and all claims, demands, losses, costs, liabilities, and damages including, without limitation, reasonable attorney's fees and expenses, incurred by VIKA and arising out of or related to any of the aforesaid.

#### **9.0 REVIEW OF SHOP DRAWINGS AND CONTRACTOR'S SUBMITTALS**

Review, checking, corrections, and comments made by VIKA on the Contractor's shop drawings and submittals do not relieve the Contractor from compliance with requirements of the Contract documents. Checking is only for review of general compliance with the information given in the contract documents. The Contractor is responsible for, among other items, confirming and correlating all quantities and dimensions, confirming manufacture specifications / representations, selecting fabrication processes and techniques of construction, coordinating his/her work with that of all other trades, and performing his/her work in a safe and satisfactory manner.

#### **10.0 EXISTING CONDITIONS/LIABILITY LIMITATION**

In as much as the site construction and the performance of VIKA's services requires that certain assumptions be made regarding existing conditions, including underground utilities, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate and serviceable systems, it is agreed that, except for negligence on the part of VIKA, VIKA will be held harmless, by the Client, against all claims arising out of or related to the existing condition at the Project. Client warrants that all matters regarding hazardous or toxic materials on or near the Project site known to the Client have been made known in writing to VIKA prior to the execution of this Agreement. VIKA shall have no responsibility for the discovery, handling, removal, or disposal of hazardous materials in any form at the Project site.

VIKA is entitled to rely upon the conditions and circumstances of the Project as represented by Client and as visually observable by VIKA. In the event of circumstances or conditions that were not so represented or observable which require an increase to VIKA's Scope of Services, VIKA shall be compensated by Client for such increase as Additional Services.

#### **11.0 UNDERGROUND UTILITIES**

- VIKA shall exercise the Standard of Care in evaluation client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at VIKA's sole discretion.
- CLIENT recognizes that the Underground Utility Information provided by or obtained by VIKA may contain errors or be incomplete. CLIENT understands that VIKA may be unable to identify the locations of all subsurface utility lines and manmade features.
- CLIENT waives, releases, and discharges VIKA from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, vaults, cables, or other utilities, etc.) which are not called to VIKA's attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of VIKA's or VIKA's subcontractor's request for utility marking services made in accordance with local industry standards.

#### **12.0 ACCESS TO THE SITE AND PERMITS**

Client agrees to provide all permits and permissions necessary for the completion of VIKA's services under this Agreement at no cost to VIKA. VIKA and VIKA's employees shall have access to the Project site at all reasonable times and shall be permitted to perform surveying procedures and photograph the Project during construction and upon completion for its records and future use.

#### **13.0 EARLY BID DOCUMENTS/FAST TRACK PROJECTS**

When the Client requests submission of early bid documents, it is acknowledged that VIKA's drawings are issued to Contractors for pricing or bid purposes in advance of full completion of construction documents by the architect and other disciplines, as well as agency approval. The Client agrees that VIKA shall not be responsible for additional construction costs arising from subsequent revisions, addenda, and corrections to VIKA's drawings, made in order to conform same to other disciplines' final drawings or in response to agency comments.

#### **14.0 PROJECT SCHEDULE**

In order for VIKA's staff to be as responsive as possible to the Project needs as well as flexible based on weather and job conditions, it is imperative that a dialogue be established prior to the commencement of design or construction stakeout on the Project between VIKA's Project Manager and the appropriate Client Representative. VIKA suggests that a coordination meeting take place at least one (1) week prior to the anticipated start of work. At this meeting, VIKA will determine, in general, what the Client's needs will be through the term of the Project and outline VIKA's staffing program. Once this meeting has taken place, VIKA encourages an ongoing dialogue between VIKA's Project Manager and the Client's Representative.

#### **15.0 CONSTRUCTION ESTIMATES**

It is expressly understood and agreed that, should VIKA be requested to prepare earthwork quantity estimates or pricing, VIKA's services are not guarantees of actual quantities or prices, but engineering estimates of quantities shown on certain plans or grading concepts. As such, VIKA shall not be held responsible for earthwork quantities and/or earthwork balances, nor for any other quantity and/or cost estimates prepared by it.

VIKA has no control over the cost of labor, materials, or equipment; the Contractor's method of determining prices; or, competitive bidding or market conditions. VIKA's opinions of probable construction costs are made on the basis of its experience and qualifications. These opinions, when rendered, represent VIKA's best judgment as a design professional familiar with the construction industry, and are not to be construed as a guarantee that proposals, bids, or the construction cost will not vary from opinions of probable costs prepared by VIKA. If the Client wishes greater assurance as to the construction cost, they shall employ an independent cost estimator.

#### **16.0 GEOTECHNICAL STRUCTURAL AND WETLAND STUDIES DESIGN AND INVESTIGATIONS**

It is expressly understood and agreed that VIKA shall not be responsible for any soil studies, geotechnical engineering stability analysis, prediction of the presence of any subsurface water, or design of underdrainage systems to handle any subsurface water that may affect the Project. Further, it is expressly understood and agreed that the Client will retain a geotechnical engineering firm for the purpose of performing investigations, preparing designs, and providing timely direction regarding all geotechnical engineering aspects of the Project and a certification that VIKA's design meets geotechnical engineer specifications. It is also expressly understood and agreed that VIKA shall have no responsibility for adequately defining the scope of required geotechnical engineering services. The Client shall engage a geotechnical engineer to independently review VIKA's design and provide a certificate that it meets the recommendations and specifications of the final geotechnical report.

It is expressly understood and agreed that VIKA shall not be responsible to predict and/or delineate the presence of wetlands or waters of the United States. In addition, it is expressly understood that structural engineering design is not included in VIKA's Scope of Services unless specifically documented in writing.

#### **17.0 PLAN PROCESSING**

VIKA provides routine submission of the engineering plans and related documents to public agencies for approval. However, it may be necessary, in order to serve the best interest and the needs of the Client, for VIKA to perform special processing such as meetings and conferences with different agencies, hand carrying the plans from agency to agency, as well as other specialized services.

These special services are not included in the basic fee and shall be





performed as additional services on an hourly basis in accordance with VIKa's current hourly rate schedule.

#### **18.0 OWNERSHIP AND REUSE OF DOCUMENTS**

It is acknowledged that the documents prepared under this Agreement are instruments of professional service and VIKa will remain sole owner of all original sketches, drawings, tracings, survey notes, computations, and etc. ("Materials") prepared by VIKa, except where they have to be filed with a government agency. However, as long as Client's account is current, all of this Material is available including reproducible copies of all original tracings for Client's use on this Project. Any digital information furnished to the Client shall not be released by the Client or furnished to third parties without the expressed written permission of VIKa and Client's account being current.

Unless otherwise specified, VIKa will develop and store digital copies of its work product for use by the Client. These files will be maintained for a period of three (3) years from the date of substantial completion of VIKa services.

There will be no obligation on VIKa's part to deliver the work product or Materials to the Client if there is any payment past due. It is agreed that the Client will hold VIKa harmless and indemnify and defend VIKa against all damages, claims, and losses, arising out of any reuse of the material or modifications to such by parties other than VIKa, without VIKa's written consent. Any digital information furnished to the Client shall not be revised by the Client or furnished to third parties without the expressed written permission of VIKa.

The Client agrees to hold harmless and indemnify VIKa against all claims, liabilities, and/or costs, including, but not limited to, attorney's fees, arising out of or in any way connected with any modification, misuse, or use by others of the work product provided by VIKa to Client under this Agreement. VIKa retains the right to retain electronic copies of its work performed hereunder and to remove from electronic copies provided to the Client all certifications and professional seals of VIKa personnel.

#### **19.0 SAFETY**

- a. Unless expressly agreed to in writing in its Proposal, CLIENT agrees that VIKa shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that VIKa personnel may rely on the safety measures provided by the General Contractor.
- b. In the event VIKa assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

#### **20.0 INSURANCE/LIABILITY LIMITATION**

VIK a represents and warrants that it and its agents, employees and Consultants employed by it, is and are protected by workman's compensation insurance, and VIKa has coverage under public liability and property damage insurance policies to protect itself from claims arising from work performed under this Agreement. Also, VIKa represents and warrants that it maintains professional liability insurance for protection from claims arising out of performance of professional services caused by any error, omission, or act for which the insured is legally liable. Certificates in evidence of policies of insurance will be provided to the Client upon request.

Notwithstanding any other provisions contained herein, VIKa shall not be responsible for any loss, damage, or liability beyond the amounts, available limits, and conditions of such insurance. No employee or agent of VIKa shall have any individual professional liability to, or in excess of, VIKa's liability as described under these Standard Terms and Conditions.

It is understood that VIKa has no liability arising from this contract or the work involved, except insofar as it may be liable for its own acts or for the acts of its employees or agents. Liability of VIKa, if any, for back charges arising from construction conditions is wholly dependent upon written notification to VIKa prior to the initiation of any corrective work, or within thirty (30) days from the occurrence, whichever date occurs first. Damages recoverable from VIKa, in the case of omissions, shall be limited to the direct extra cost to the Client over the cost to the Client, had the omission not occurred, and, in the case of errors, shall be limited to the direct extra cost to the Client of the necessary corrective work. Recovery for any consequential damages, or delay, impact, interference, or inefficiency is

expressly waived.

#### **21.0 Certificate of Merit:**

Client agrees it will assert no claim for professional negligence, either directly or in a third-party claim, against VIKa, unless Client as a strict condition precedent, first provides VIKa with a written certification executed by an independent design professional currently practicing in the same state and discipline as VIKa. This written "Certificate of Merit" shall (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care of a professional performing professional services under similar circumstances, in a similar locality, and at a similar point in time; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to this professional standard of care. This Certificate of Merit shall be provided to VIKa not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration, mediation, or judicial proceeding and shall take precedence over any existing state law in force at the time of the claim or demand for arbitration, mediation, or judicial proceeding.

#### **22.0 FEES AND PAYMENTS**

VIK a will render its invoice monthly based on a percentage of the work completed that month for lump sum items and for actual hours spent that month for hourly items. In the event that public agency review is required on lump sum items, VIKa will invoice up to eighty percent (80%) of the quoted fee at such time as plans are submitted to the public agency for review; VIKa will further invoice up to ninety-five percent (95%) after it has addressed comments received from the respective agency; and one hundred percent (100%) upon formal action by that agency. Each invoice will be due in full upon receipt. If at any time an invoice remains unpaid in excess of thirty (30) days from the date of the invoice, a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate of interest permitted by law, will be charged on the unpaid amount at the end of the month, and each month thereafter, until the unpaid amount, including all service charges, is paid in full.

In the event that an invoice remains unpaid more than forty-five (45) days, all work on the Project may be suspended by VIKa unless otherwise agreed to by VIKa in writing. In addition, VIKa reserves the right to pursue all appropriate remedies, including retaining any and all drawings without recourse until the account is paid in full. In the event that litigation is required to obtain payment of the fees provided for herein, Client hereby agrees to pay, along with any judgment awarded to VIKa, all attorneys' fees, collection costs, and court costs sustained in connection with such litigation. Timely payment of invoices is a condition of this Agreement. Failure to make payments in full within the time limits stated above will be considered substantial non-compliance with the terms of this Agreement, and will be cause for termination of this Agreement, if VIKa so chooses.

VIK a may unilaterally increase its lump sum or unit billing rates on each annual anniversary of Client's acceptance of this Agreement, by up to five percent (5%) or the percentage increase in the CPI-W (U.S. Department of Labor Consumer Price Index-Washington), whichever is greater. Hourly rates are subject to the same annual revision at the discretion of VIKa.

If the Client requests VIKa to perform its work in a time frame beyond the normal forty (40) hour work week, VIKa will attempt to comply with such request, however, its fees shall be subject to adjustment as agreed upon by the parties and all VIKa personnel cost shall be invoiced at one and one-half (1.5) times the normal billing rate unless other arrangements are made in writing executed by VIKa and Client.

#### **23.0 TERMINATION OF AGREEMENT**

The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. Client may exercise its right to terminate only if it has made all payments due and owing to VIKa as provided in this Agreement.

Client agrees to be liable, and pay VIKa for all labor done, work performed, material furnished, and all expenses incurred for all work and additional work up to and including the day that work is terminated, in accordance with the notice required under this Section.

#### **24.0 PROJECT SUSPENSION, ABANDONMENT, AND RESUMING**

If the Project is suspended or abandoned in whole or in part through no fault of VIKa, VIKa shall be compensated for all services performed prior to receipt of written notice from Client of such suspension or abandonment, together with any reimbursable expenses then due.



Moreover, in the event the Project is resumed, VIKa may require an additional re-start or mobilization fee, the terms of which must be agreed to by the parties, before VIKa resumes its work.

#### **25.0 ASSIGNS**

Neither Client nor VIKa may delegate, assign, sublet, or transfer its duties or interest in this Agreement without the written consent of the other party. Said consent shall not be unreasonably withheld by either party.

#### **26.0 THIRD PARTY CLAIMS EXCLUSION**

Client and VIKa agree that the Services are performed solely for the benefit of the Client and are not intended by either Client or VIKa to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third-party beneficiary to the Agreement. No third-party shall have the right to rely on VIKa's opinions rendered in connection with VIKa's Services without written consent from both Client and VIKa, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that VIKa's Scope of Services performed is adequate.

#### **27.0 DISPUTE RESOLUTION**

a. All claims, disputes, or controversies ("Disputes") arising out of, or in relation to the interpretation, application, or enforcement of this Agreement shall be decided as follows. Complying (or showing that a good faith effort to comply) with these dispute resolution terms is a pre-condition to filing suit.

(i) Client and VIKa agree to attend a dispute resolution meeting within fourteen (14) days of the identification of the dispute, to negotiate the dispute in good faith and to have each party's representative have the authority to resolve the dispute on behalf of that party.

(ii) Should the dispute resolution meeting fail to resolve the dispute, Client and VIKa agree to promptly mediate the dispute using a mediator acceptable to both parties, to negotiate in good faith and to equally share the cost of the mediation.

(iii) Should the mediation fail, or should it never occur then either party may initiate litigation, however, the party that initiates the litigation must show compliance or a good faith compliance effort with respect to the dispute resolution meeting and/or mediation.

b. In the event that Client institutes legal action or arbitration against VIKa because of any alleged failure to perform, or for any alleged error, omission, or negligence, and if such suit or arbitration is dismissed, or if judgment is rendered for VIKa, or if VIKa brings a substantially successful legal action or arbitration claim against Client, Client agrees to reimburse VIKa or pay any and all costs incurred by VIKa, including attorneys' fees, expert witnesses, fees and court or arbitration costs, and any and all expenses of the legal proceedings that were incurred by VIKa, immediately following dismissal of the case or immediately upon judgment being rendered on behalf of VIKa.

#### **28.0 SEVERABILITY**

In the event that any provisions herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

#### **29.0 WARRANTY OF AUTHORITY TO SIGN**

The individual signing this contract warrants that he/she has authority to sign as, or on behalf of, Client for whom or for whose benefit VIKa's services are rendered. If such individual does not have such authority, he/she understands and agrees that he/she is personally responsible for this contract to VIKa, in addition to any liability which Client may have.

#### **30.0 NON-ALTERATION OR TERMS**

This Agreement, and all the terms herein, may only be amended, deleted or otherwise altered by a written document signed by VIKa and Client, and in any event, on VIKa's behalf by approval of a corporate officer. VIKa's Project Manager has no authority to waive any matter or to amend the Agreement between VIKa and Client.

#### **31.0 ENTIRE AGREEMENT**

These Standard Terms and Conditions, Attachment A, any drawings, plans, plats, and/or exhibits referred to or attached hereto, and the Proposal to which these items are attached, set forth the entire understanding and agreement between the parties with respect to the subject matter contained therein, and shall be binding and inure (except as otherwise provided herein) to the benefit of the parties and their respective successor and assigns. This Agreement supersedes all prior documents, agreements, and understanding between the parties with respect to the transactions contemplated hereby.

#### **32.0 CONTROLLING LAW**

This Agreement is to be governed by the law of the place of business of the VIKa office submitting this Proposal, and the parties hereby submit themselves exclusively to the applicable state and/or federal court with jurisdiction over such VIKa place / location of business.

#### **33.0 TIME BAR TO LEGAL ACTION**

Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, Client and VIKa agree that a lawsuit by either party alleging a breach of this Agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from

the time the party knew, or reasonably should have known, of the facts and conditions giving rise to its claims, and under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of VIKa's Services.

#### **34.0 MISCELLANEOUS**

- a. To the fullest extent permitted by law, the total liability of VIKa with regard to its work performed under this Agreement shall be limited to the lesser of VIKa's fees or its insurance policy limits under this Agreement. This and other limitations of liability and indemnities provided in this Agreement are business understandings of the parties and shall apply to all theories of liability, including but not limited to, breach of contract or warranty, negligence, and/or strict/statutory liability.
- b. VIKa shall have the right to photograph and use the name of the Client with respect to any aspect of the Project on which it is working for the Client before, during, or after completion and use the photographs for marketing, for defense of claims, and/or for any other commercial uses, unless otherwise limited in writing and signed by VIKa.
- c. VIKa is an independent Consultant/Contractor, and no person or entity, other than VIKa and Client shall be deemed to be a part to or a third-party beneficiary of this Agreement. Moreover, VIKa and Client are neither partners nor involved in a joint venture with respect to the Project covered by this Agreement.
- d. If due to VIKa's breach of this Agreement any required item or component of the Project is omitted from VIKa's construction documents or drawings, VIKa shall not be responsible for paying the cost to add such item or component to the extent that it would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event shall VIKa be responsible for any cost or expense that provides betterment, upgrade, or enhancement of or to the Project.
- e. Neither party, during the term of this Agreement and for one (1) year thereafter, shall solicit the employment or shall employ, use, or contract for employment the other party's employees, agents, or representative's other than as provided herein.





## SCHEDULE B-1

**Items to be provided by Client  
unless specifically included in the Scope of VIKA Services**

1. Boundary, topography, title report, and ALTA.
2. Digital backgrounds of all building plans, elevations, sections and details prepared by architect and their associated design subcontractors (i.e. MEP, Structural). ACAD backgrounds provided by other team members for use by VIKA shall be formatted for easy reference.
3. Building data (i.e., GFA, NFA, height, type of construction, use group classification, number of stories, footprint area, etc.).
4. Building utility connections with size and invert.
5. Building water demands and meter size.
6. Required fire flow and location of fire walls.
7. All agency review and permitting fees.
8. Wetlands delineation and permits.
9. All environmental, archeological and endangered species data.
10. Geotechnical data, report, and specifications.
11. Traffic data and studies and signalization designation.
12. Lighting plan / photometric study.
13. Irrigation plan.
14. Landscape / hardscape plan.
15. Private utility mapping and designation.
16. Dry utility investigation / design.
17. Offsite letters of permission / easements.
18. Legal counsel.
19. Noise / acoustical study.
20. FAA Certification.
21. Required ADA site entrances and routes and independent ADA consultant review of VIKA site design.





**Attachment C**

**How may we reach you?** In an effort to make sure we reach the appropriate people and have all of the necessary information you need to process our invoices; please consider filling out the following information:

**Introduce us to your Project Manager for this project:**

Name: \_\_\_\_\_

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

Email: \_\_\_\_\_

Phone number: \_\_\_\_\_

**Is there a specific person, other than the person above, who should receive the invoices for this project?**

Name: \_\_\_\_\_

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

Email: \_\_\_\_\_

Phone number: \_\_\_\_\_

**Should the invoices be addressed per the contract?**

**Is there any additional information that we should provide on our invoice that would be helpful for you?**

PO Number: \_\_\_\_\_

Project Number: \_\_\_\_\_

Other: \_\_\_\_\_



**VIKA Maryland, LLC**

20251 Century Boulevard, Suite 400 \* Germantown, Maryland 20874 \* 301.916.4100 Fax 301.916.2262  
Tysons, VA \* Germantown, MD \* Washington, DC  
[www.vika.com](http://www.vika.com)





ENGINEERS \* PLANNERS \* LANDSCAPE ARCHITECTS \* SURVEYORS \* GEOMATICS

**VIKA Maryland, LLC**  
 20251 Century Boulevard, Suite 400  
 Germantown, MD 20874  
 (301) 916-4100/Fax (301) 916-2262

### Invoice

**PROJECT BILLING CONTACT**  
 FREDERICK KLEIN  
 ISLAMIC REPUBLIC OF AFGHANISTAN c/o  
 DLA PIPER LLP  
 500 EIGHTH STREET, NW  
 WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

Invoice Date: June 19, 2019  
 Invoice #: 14122

**PROJECT MANAGER CONTACT**  
 FREDERICK KLEIN  
 ISLAMIC REPUBLIC OF AFGHANISTAN c/o  
 DLA PIPER LLP  
 500 EIGHTH STREET, NW  
 WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

Re: VM50355A AFGHANISTAN EMBASSY #G5675

Professional Services through May 31, 2019

Task#	Task Description	Contract Amount	Billed % Complete	Fee Earned	Prior Billed	Current Billing
001	SURVEY TO MARK	\$8,800.00	15 %	\$1,320.00	\$0.00	\$1,320.00
002	HB - SITE SURVEYING AS REQUESTED	\$15,000.00		\$6,230.00	\$0.00	\$6,230.00
ME	DIGITAL/REPROGRAPHIC/REIMBURSABLES	\$0.00		\$0.00	\$0.00	
<b>TOTAL THIS INVOICE</b>		\$23,800.00		\$7,550.00	\$0.00	\$7,550.00

**Total this Invoice \$7,550.00**

#### AGED STATEMENT OF ACCOUNT AS OF INVOICE DATE

<u>This Invoice</u>	<u>&lt;30 Days</u>	<u>31-60 Days</u>	<u>61-90 Days</u>	<u>91-120 Days</u>	<u>&gt; 120 Days</u>	<u>TOTAL DUE</u>
\$7,550.00						\$7,550.00

INVOICES EMAILED TO:



صفحه ۱۲ از ۲۷

ضمیمه ۱

VIKA Maryland LLC

## Detailed Invoice Backup

To:

**PROJECT BILLING CONTACT:**  
FREDERICK KLEIN  
ISLAMIC REPUBLIC OF AFGHANISTAN c/o  
DLA PIPER LLP  
500 EIGHTH STREET, NW  
WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

Invoice Date: June 19, 2019  
Invoice #: 14122

**PROJECT MANAGER CONTACT:**  
FREDERICK KLEIN  
ISLAMIC REPUBLIC OF AFGHANISTAN c/o DLA  
PIPER LLP  
500 EIGHTH STREET, NW  
WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

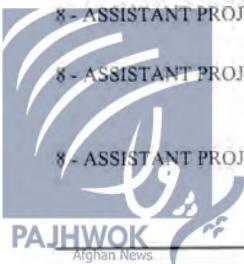
Project VM50355A AFGHANISTAN EMBASSY #G5675  
Professional Services through May 31, 2019

**TASK #001 SURVEY TO MARK**

Total this Work Order \$1,320.00

**TASK #002 HB - SITE SURVEYING AS REQUESTED**

			Hours	Rate	Amount
6 - SR DIV SURVEY/ENGINEER/PLAN MGR	05/31/2019	COORDINATE CONTRACT AND BILLING FOR ALL OFFICE ON THIS PROJECT, REVIEW X-SECTION EXHIBIT	2.00	230.00	460.00
23 - SENIOR ASSOCIATE	05/20/2019	COORDINATION OF FIELD CREW AND MATT HULL TO COLLECT DATA ON WALL AND BOUNDARY INFO	2.00	220.00	440.00
23 - SENIOR ASSOCIATE	05/21/2019	COORDINATE WITH STAFF TO PRODUCE EXHIBIT FOR WALL	1.50	220.00	330.00
23 - SENIOR ASSOCIATE	05/24/2019	COORDINATE EXHIBIT AND BOUNDARY INFO	5.00	220.00	1,100.00
32 - 2 MAN SURVEY CREW	05/20/2019	LOCATE STM, CORNERS OF WALLS, CORNERS OF BLS.	3.00	175.00	525.00
32 - 2 MAN SURVEY CREW	05/20/2019	SCAN PROPERTY FOR TOPOGRAPHIC SURVEY	3.00	175.00	525.00
8 - ASSISTANT PROJECT MANAGER	05/20/2019	REG SCANS, CREATE STM CAD FILE	2.00	120.00	240.00
32 - 2 MAN SURVEY CREW	05/20/2019	LOCATE STM, CORNERS OF WALLS, CORNERS OF BUILDINGS	3.00	175.00	525.00
32 - 2 MAN SURVEY CREW	05/20/2019	SCAN PROPERTY FOR TOPGRAPHIC SURVEY	3.00	175.00	525.00
8 - ASSISTANT PROJECT MANAGER	05/21/2019	CREATE BASE WORKSHEET	6.00	120.00	720.00
8 - ASSISTANT PROJECT MANAGER	05/22/2019	CREATE BASE WORKSHEET	1.00	120.00	120.00
8 - ASSISTANT PROJECT MANAGER	05/24/2019	ADD STM, DIMENSIONS, AND ADDITIONAL LINEWORK TO BASE	2.00	120.00	240.00
8 - ASSISTANT PROJECT MANAGER	05/30/2019	CREATE CROSS SECTIONS FOR BRICK WALLS	4.00	120.00	480.00





Invoice Date: 06/19/2019  
Invoice #: 14122

Totals

37.50

Total this Work Order

\$6,230.00

Total this Invoice

\$7,550.00





**VIKA VIRGINIA LLC**  
 8180 Greensboro Drive, Suite 200  
 Tysons, Virginia 22102  
 (703) 442-7800 / Fax (703) 761-2787

### Invoice

**PROJECT BILLING CONTACT**  
 FRED KLEIN  
 DLA PIPER, LLP (US)  
 500 EIGHTH STREET, NW  
 WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

Invoice Date: June 27, 2019  
 Invoice #: 16527

**PROJECT MANAGER CONTACT**  
 FRED KLEIN  
 DLA PIPER, LLP (US)  
 500 EIGHTH STREET, NW  
 WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

Re: VV8135A AFGHAN EMBASSY  
 Professional Services through May 31, 2019

Task#	Task Description	Contract Amount	Billed % Complete	Fee Earned	Prior Billed	Current Billing
001	UTILITY DESIGNATION FIELD WORK	\$2,800.00	100 %	\$2,800.00	\$0.00	\$2,800.00
002	FIELD LOCATIONS (UTILITY DESIGNATIONS)	\$1,400.00	100 %	\$1,400.00	\$0.00	\$1,400.00
003	OFFICE DESIGN COORDINATION	\$1,000.00	100 %	\$1,000.00	\$0.00	\$1,000.00
ME	DIGITAL/REPROGRAPHIC/REIMBURSABLES	\$0.00		\$0.00	\$0.00	
<b>TOTAL THIS INVOICE</b>		\$5,200.00		\$5,200.00	\$0.00	\$5,200.00

**Total this Invoice \$5,200.00**

#### AGED STATEMENT OF ACCOUNT AS OF INVOICE DATE

<u>This Invoice</u>	<u>&lt;30 Days</u>	<u>31-60 Days</u>	<u>61-90 Days</u>	<u>91-120 Days</u>	<u>&gt; 120 Days</u>	<u>TOTAL DUE</u>
\$5,200.00						\$5,200.00

#### INVOICES EMAILED TO:

[frederick.klein@dlapiper.com](mailto:frederick.klein@dlapiper.com)



VIKA Virginia LLC

## Detailed Invoice Backup

To:

**PROJECT BILLING CONTACT:**  
FRED KLEIN  
DLA PIPER, LLP (US)  
500 EIGHTH STREET, NW  
WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

Invoice Date: June 27, 2019  
Invoice #: 16527  
**PROJECT MANAGER CONTACT:**  
FRED KLEIN  
DLA PIPER, LLP (US)  
500 EIGHTH STREET, NW  
WASHINGTON, DC 20004  
[FREDERICK.KLEIN@DLAPIPER.COM](mailto:FREDERICK.KLEIN@DLAPIPER.COM)

Project VV8135A AFGHAN EMBASSY  
Professional Services through May 31, 2019

TASK #001	UTILITY DESIGNATION FIELD WORK	Total this Work Order	\$2,800.00
TASK #002	FIELD LOCATIONS (UTILITY DESIGNATIONS)	Total this Work Order	\$1,400.00
TASK #003	OFFICE DESIGN COORDINATION	Total this Work Order	\$1,000.00
<b>Total this Invoice</b>			<b>\$5,200.00</b>







The Embassy of  
Afghanistan  
WASHINGTON DC

Barakatullah Rahmati <b.rahmati@afghanembassy.us>

## Vika Contract

Klein, Frederick L. <frederick.klein@dlapiper.com>

Wed, May 29, 2019 at 6:29 PM

To: "Barakatullah ("Barakat") Rahmati (b.rahmati@afghanembassy.us)" <b.rahmati@afghanembassy.us>, "Yama Nezam (yama.nezam@gmail.com)" <yama.nezam@gmail.com>

Cc: Madina Qasimi <m.qasimi@afghanembassy.us>, Jahid Banoori <j.banoori@afghanembassy.us>, Abdullah Khodadad <a.khodadad@afghanembassy.us>, Roya Rahmani <amb.rahmani@afghanembassy.us>, "Medzhibovsky, Leon" <leon.medzhibovsky@dlapiper.com>, "Allyn E. Kilsheimer (Allyn@kcestructural.com)" <Allyn@kcestructural.com>

Please see attached. We need more detailed assistance from Vika than we had originally anticipated, and here is a revised proposal. Allyn and I both recommend that you proceed with this. As before, with your authorization, DLA Piper can countersign this proposal on your behalf. We need to proceed with this promptly.

Fred

شرح اضافہ کاری - 1

Frederick L. Klein

DLA Piper LLP (US)

1-202-799-4101

From: Harry Jenkins, L.S. <hjenkins@vika.com>

Sent: Wednesday, May 29, 2019 1:14 PM

To: Klein, Frederick L. <Frederick.Klein@us.dlapiper.com>

Subject: RE: Afghanistan Embassy - Signed Vika Contract

[EXTERNAL]

Fred,

I have attached an ASA which combines the work from our three offices that Allyn has ordered over the past couple of weeks. With the additional utility work today, our total is about 10k. I put a budget amount of 15k to cover any additional items Allyn might ask for moving forward. Please let me know if you have any questions.



Senior Division Surveying Manager

صفحه ۱۱۷ از ۴۷



ضمیمه ۱



## ATTORNEY WORK PRODUCT; PRIVILEGED AND CONFIDENTIAL

## AGREEMENT TO PROVIDE ADDITIONAL SERVICES

Islamic Republic of Afghanistan

c/o DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004

DATE: May 28, 2019

PROJECT NAME: Afghanistan Embassy

VIKA JOB #: VM50355A.2

EMAIL: Frederick.klein@dlapiper.com

ATTN: Frederick Klein

افغانستان

It has come to our attention that certain additional professional services are now required from our staff that were not included in our contract. In an effort to continue proceeding expeditiously with your project, and in accordance with the extra work and/or additional services section of our contract, we propose to provide the following extra work for the quoted fee.

**2. Site Surveying as Requested (S) ..... Hourly Budget \$15,000**

As requested by Allyn Kilshimer at KCE, our staff will establish the approximate boundary lines, prepare a topographic survey on a portion of the property, the adjacent property and provide locations of key points on the building, garage and wall. We will also provide sub surface locations of utilities within the wall area. Do to the nature of this project and possible further wall collapse issues, we will utilize our laser and scanning equipment for these tasks.

This task also includes any additional survey items that may be requested by KCE.

Our fee for these services will be invoiced as additional services (extra work) in accordance with the terms of our contract.

This Additional Services will not be completed until either a written notification to proceed has been received by VIKA and/or a Change Order/Purchase Order has been received by VIKA, unless alternative contract arrangements have been made.

Alternatively, if you desire work to commence prior to your office issuing the Change Order/Purchase Order, VIKA will commence work only upon receipt of an e-mail providing direct notice to proceed from an authorized Client Representative.

If you desire to make any other arrangement for these services, please notify our office immediately. This proposal for additional services shall be deemed as accepted by the Client even if the Client has not returned an executed copy, but has indicated that he/she expects VIKA to begin the work outlined herein, and/or receives work from VIKA performed in accordance with this agreement.

If you have any questions, please feel free to give me a call.

VIKA Maryland, LLC

VIKA Maryland, LLC

Harry L. Jenkins, L.S.  
Senior Division Surveying Manager

David F. Unger, II, L.S.  
Vice President/Director of Surveys

HLJ/cs

VIKA Maryland, LLC

PAJHWOK  
Afghan News

20251 Century Boulevard, Suite 400 ✪ Germantown, Maryland 20874 ✪ 301.916.4100 Fax 301.916.2262  
Tysons, VA ✪ Germantown, MD ✪ Washington, DC

www.vika.com

صفحه ۱۸ از ۲۷

ضمیمه ۱





The Embassy of  
Afghanistan  
WASHINGTON, D.C.

Barakatullah Rahmati <b.rahmati@afghanembassy.us>

## Vika Work

1 message

Klein, Frederick L. <frederick.klein@dlapiper.com>

Thu, May 30, 2019 at 1:33 PM

To: "Barakatullah ("Barakat") Rahmati (b.rahmati@afghanembassy.us)" <b.rahmati@afghanembassy.us>

Cc: "Yama Nezam (yama.nezam@gmail.com)" <yama.nezam@gmail.com>, Madina Qasimi

<m.qasimi@afghanembassy.us>, Jahid Banoori <j.banoori@afghanembassy.us>, Abdullah Khodadad

<a.khodadad@afghanembassy.us>, Roya Rahmani <amb.rahmani@afghanembassy.us>, "Medzhibovsky, Leon"

<leon.medzhibovsky@dlapiper.com>, "Allyn E. Kilsheimer (Allyn@kcestructural.com)" <Allyn@kcestructural.com>, Meg Staley <Meg@kcestructural.com>

شرح افغانستانی - 2

Dear Barakat:

In response to your email just before noon today, I asked Harry Jenkins for some more detail on the work Vika has already done for your government, and the reasons why he submitted an additional proposal. Please see below. I have read Harry's explanation and I think it is reasonable and appropriate, given the level of complexity associated with this assignment. The data that Vika is assembling, and its field work, will help us with both the temporary and final repairs and improvements, per your instructions. Vika has been very responsive and as I told you at the beginning when we retained Vika, I believe it is the best civil engineering/surveying firm in this region, and the most qualified for this difficult assignment. Please let me know if you have any questions and whether we can proceed with the revised scope of work in Vika's proposal. As always, we need to move forward promptly with this work.

Allyn is receiving a cc of this message, and if Allyn has anything to add, please go ahead.

Regards,

Fred

Frederick L. Klein

DLA Piper LLP (US)

1-202-799-4101

From: Harry Jenkins, L.S. <hjenkins@vika.com>

Sent: Thursday, May 30, 2019 12:33 PM

To: Klein, Frederick L. <Frederick.Klein@us.dlapiper.com>

Subject: Afghan Embassy

PAVIAVIR  
Afghan News

صفحه ۱۹ از ۴۷

ضمیمه ۱

[EXTERNAL]

Fred,

Per our conversation this morning, here's a condensed version of our work over the past week or so ....

On Sunday the 19th, Allyn Killshimer at KCE caller Frank Jenkins from our Va. Office and asked that we immediately mobilize and obtain surveying information that he needed for his work. On Monday, personal in our Va, Md. And DC offices coordinated equipment and manpower and then mapped out a game plan. On Tuesday, crews and personal from our Md and DC office met on site with our laser scanner and GPS equipment to establish an approximate boundary for the property, topographically locate the walls, garage and other site features as requested.

شرح اضافی - 2 - ادامه

For the boundary portion of this exercise, we located point along Wyoming, 23rd and 24th streets. This was then compiled along with reviewing the available survey papers from the Office of the Dc Surveyor. The boundary exhibit was then prepared and passed along to KCE by the end of the week.

For the Topographic locations, our Md. Office utilized our laser scanning equipment to obtain locations on site and along the walls to the east and to the north. This information was then downloaded, and the information was also passed along to KCE.

KCE along requested that we prepare "x-sections" of the wall area, which was completed and set to them today.

KCE also asked for "Sub Surface" utility locations which our Va. Office was on site yesterday doing the field work.

We have had a total of approximately ten different personal from all three offices, coordinating and working on this project in the last week or so.


Please let me know if you have any questions.

Thx

*Harry*

Harry Jenkins, LS

Senior Division Surveying Manager

 Ranked in The Washington Business Journal as one of the Top Engineering Firms

Vika Work, LLC

20251 Century Boulevard | Suite 400 | Germantown, MD 20874

صفحه ۲۰ از ۴۷

ضمیمه ۱



شماره قرارداد: APR 2019-C

**قرارداد کننده:** شرکت حقوقی DLA Piper به نیابت از سفارت جمهوری اسلامی افغانستان و با اجازه رسمی از سفارت \*

**قراردادی:** شرکت انجینیری ساختمانی KCE

**موضوع قرارداد:** ارائه خدمات مشوره تخنیکي و انجینیری

**مبلغ قرارداد:** ۵۰۰۰۰ پنجاه هزار دالر امریکایی (با احتساب اضافه کاری مبلغ ۶۴۸۳۸,۷۵ دالر امریکایی)

نوت: در آغاز کار پروژه بر اساس تصمیم جمعی تیم کاری سفارت و مبتنی بر مشوره حقوقی وکیل سفارت، به منظور حفظ محرمت یافته های شرکت ساختمانی مشوره دهنده (KCE) و شرکت سروی (VIKA) باید یافته های هر دو شرکت تحت شرایط "Attorney Client Privileged" (مخصوص و محفوظ بین وکیل و موکل) قرار می گرفت. هدف اساسی این بود که در صورتیکه همسایه و وکیل حقوقی ایشان مسئله را به محکمه رجعت بدهند، یافته های مشاورین سفارت بر علیه سفارت قابل استفاده نباشد و در صورتیکه سفارت تصمیم بگیرد برای دریافت غرامت همسایه را به محکمه بکشاند، امکان استفاده موثر و مفید از معلومات جمع آوری شده وجود داشته باشد.

به منظور تحقق امر فوق و حفظ محرمت نتایج یافته ها، لازم بود تا قرارداد متذکره را شرکت حقوقی به نیابت از سفارت امضا نماید، در حالیکه تمامی مرادوات بعدی به شمول پرداخت مصارف به قراردادی ها مستقیماً توسط سفارت صورت می گیرد. به همین منظور قرارداد ضمیمه با شرکت KCE توسط آقای Frederick L. Klein که وکیل حقوقی سفارت می باشد به امضا رسیده است.

در عین حال باید خاطرنشان ساخت روال معمول تدارکات در ایالات متحده امریکا برای خدمات ابتدایی مانند این پروژه، ارائه آفر توسط شخص یا شرکت ارائه کننده و پذیرش آن توسط شخص یا نهاد تقاضا کننده می باشد و ایجاب و قبول بین طرفین حکم قرارداد را ایفا می نماید. به همین دلیل سند ضمیمه من حیث قرارداد رسمی محسوب می گردد.

اضافه کاری: طوریکه در مکاتبات رسمی متعدد انعکاس یافت، پیچیده شدن شرایط کاری و تغییر مکرر قراردادی باعث افزایش چشم گیر در حجم کاری شرکت مشوره دهنده گردید و به همین دلیل ۴ بل ضمیمه مبلغ مجموعی ۶۴۸۳۸,۷۵ دالر را احتوا می نماید که البته مبلغ ۲۵۰۰۰ دالر آن به شکل ضمانت می باشد و در صورتیکه از خدمات شرکت متذکره استفاده نگردد برای دولت افغانستان قابل بازپرداخت می باشد. با توجه به اینکه کار پروژه تا اکنون در مرحله ابتدایی قرار دارد، احتمال افزایش بیشتر هزینه های شرکت تخنیکي مشوره دهنده وجود دارد.

- ضمیمه ۷ ورق -



تأیید شخص اول سفارت

# KCE STRUCTURAL ENGINEERS, P.C.

CONSULTING ENGINEERS • 1818 JEFFERSON PLACE, N.W. • WASHINGTON, D.C. 20036

PHONE: 202-833-8622

[WWW.KCESTRUCTURAL.COM](http://WWW.KCESTRUCTURAL.COM)

FAX: 202-833-3877

April 4, 2019

Islamic Republic of Afghanistan  
c/o DLA Piper LLP (US)  
500 Eighth Street NW  
Washington DC 20004

Attn: Frederick L. Klein

RE: Afghan Embassy Structural Investigation & Consultation  
2341 Wyoming Avenue NW, Washington, DC  
East Property Line Retaining Wall Failure

PreJob No. APR 2019-C

Gentlemen:

We are pleased to submit herewith our proposal to provide structural engineering services, as described below, for the above-referenced Project.

## SCOPE OF WORK

### Phase I

This office will investigate the condition of the above-referenced existing condition to review the structural problems. Our investigation will include, as appropriate, visual observation and non-destructive testing, as well as investigation of the facts, the observation of debris removal, and the review of design and installation of shoring by others of your selection. This proposal includes any and all necessary engineering observation field work and telephonic and in person meetings at the site or with the DC Government, as needed.

### Phase II

The purpose of our investigation under Phase II will be to determine the cause or causes of any problems and to recommend safety remedial action as appropriate. We will provide a written report of our findings.

If required, under a separate proposal, we will also develop an appropriate repair program and monitor the repair work to ensure that it is performed in accordance with Project specifications and accepted industry standards.



Professional Registrations: AZ, DE, DC, FL, GA, IN, KY, MD, MA, NJ, NY, NC, PA, TN, TX, VT, VA, WV, NCEES





This office will also provide under a separate proposal structural engineering consultation services as required in connection with the above-referenced matter, including expert witness testimony, by deposition or court appearance or arbitration participation, as required or requested by you.

#### COMPENSATION

Our services, except for deposition, arbitration appearance, court appearance or on-call services, will be performed on a time and materials basis, three (3) times direct personnel expense, and principal at the direct hourly rate of four hundred and fifty dollars (\$450) per hour, for a fee for Phase I SWAG estimated to be fifty thousand dollars (\$50,000), plus reimbursable expenses at cost plus 15%.

We will require a retainer of twenty-five thousand dollars (\$25,000) to be credited against the last invoice, or if not used, then to be returned to you.

It is understood that billing rates, other than principal, will be computed using actual payroll costs for each individual working on the Project; the rate for principal's time is subject to change on January 1st of each year.

#### PRINTING/PLOTTING COSTS

All printing/plotting costs shall be charged directly to you at the Blueprinter of your choice, unless performed in-house, in which case costs will be billed as reimbursable expense.

#### REIMBURSABLE EXPENSES

Reimbursable expenses (including in-house printing, in-house plotting, postage, delivery, photocopying, transportation, telephone, computer costs, etc.) shall be in addition to any fee amount.

Reimbursable expenses will be charged to you at cost plus 15% and will be billed as the costs are incurred.

#### PAYMENT

Payments to us shall be made by you within thirty (30) days of submission to you of our monthly invoices.

Late payments may be subject to an interest penalty (computed at two percentage points above the prime rate (per *Wall Street Journal*) in effect on the due date of the invoice), and/or may result in our stopping all work on the Project until payment is made.

#### RESPONSIBILITIES

You shall defend, indemnify and hold us harmless, to the full extent permitted by law, from all claims, expenses and damages arising from or alleged to arise from the performance or nonperformance of services by others, including other consultants, regardless of any approval or review of such services by us, and without any limitation on any rights or remedies we might otherwise have.



#### OWNERSHIP OF DOCUMENTS

KCE Structural Engineers, PC shall retain all ownership and copyrights to the work effort described herein.

#### JURISDICTION

This contract and the work described here shall be governed by the laws of the District of Columbia.

#### TERMINATION

This agreement may be terminated by either party by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the other party. If terminated due to the fault of others, other than KCE, KCE shall be paid for services performed to the date of termination, including reimbursements then due, plus terminal expense.


#### ACCEPTANCE

If this proposal has not been accepted by you within thirty (30) days, we reserve the right to cancel or amend if as necessary.

Acceptance of this proposal by you certifies that it is a legal and binding contract and that you agree to abide by the terms and conditions stated herein. Such acceptance shall constitute formal notice to proceed as necessary.

Please signify your acceptance of this proposal by signing below and returning one copy to this office.

Very truly yours,

  
Allyn E. Kilsheimer, PE  
President  
KCE Structural Engineers, PC

ACCEPTED BY DUA PIPER LLP (as) attorneys  
TITLE DY: F.L. Klein, Partner  
WITNESS \_\_\_\_\_  
DATE April 15, 2019  
AEK:ms





**Invoice**

KCE Structural Engineers, PC  
1818 Jefferson Place, NW  
Washington, DC 20036  
Phone: 202-833-8622 Fax: 202-833-3877  
Fed Tax ID No: 52-0961703



Frederick Klein  
Islamic Republic of Afghanistan  
c/o DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004

April 7, 2019  
Project No: 2019-00-17  
Invoice No: 0127079

Project 2019-00-17 Afghan Embassy Structural Investigation & Consultation - East  
Property Line Retaining Wall Failure

**Professional Services from April 1, 2019 through April 7, 2019****Professional Personnel Fee**

	Hours	Amount	
Principal	6.00	2,700.00	
Office Manager	2.00	350.80	
Totals	8.00	3,050.80	
<b>Total Labor</b>			<b>3,050.80</b>
<b>Total Additional this Invoice</b>			<b>\$3,050.80</b>

**Billings to Date**

	Current	Prior	Total	Received	A/R Balance
Labor	3,050.80	0.00	3,050.80		
<b>Totals</b>	<b>3,050.80</b>	<b>0.00</b>	<b>3,050.80</b>	<b>0.00</b>	<b>3,050.80</b>



**Invoice**

KCE Structural Engineers, PC  
1818 Jefferson Place, NW  
Washington, DC 20036  
Phone: 202-833-8622 Fax: 202-833-3877  
Fed Tax ID No: 52-0961703



Frederick Klein  
Islamic Republic of Afghanistan  
c/o DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004

April 30, 2019  
Project No: 2019-00-17  
Invoice No: 0127080

Project 2019-00-17 Afghan Embassy Structural Investigation & Consultation - East  
Property Line Retaining Wall Failure

**Retainer**

Retainer

25,000.00

**Total Adjustments****25,000.00****25,000.00****Total Additional this Invoice****\$25,000.00**

صفحه ۱۲۶ از ۲۷

ضمیمه ۲



**Invoice**

KCE Structural Engineers, PC  
1818 Jefferson Place, NW  
Washington, DC 20036  
Phone: 202-833-8622 Fax: 202-833-3877  
Fed Tax ID No: 52-0961703



Frederick Klein  
Islamic Republic of Afghanistan  
c/o DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004

May 5, 2019 (April 2019 Invoice)  
Project No: 2019-00-17  
Invoice No: 0127138

Project 2019-00-17 Afghan Embassy Structural Investigation & Consultation - East  
Property Line Retaining Wall Failure

**Professional Services from April 8, 2019 through May 5, 2019****Professional Personnel Fee**

	Hours	Amount	
Principal	30.00	13,500.00	
Field Engineer	6.50	742.40	
Office Manager	2.00	350.80	
Administration	6.25	670.00	
Totals	44.75	15,263.20	
<b>Total Labor</b>			<b>15,263.20</b>
<b>Total Additional this Invoice</b>			<b>\$15,263.20</b>

**Outstanding Invoices**

Number	Date	Balance
0127079	4/7/2019	3,050.80
0127080	4/30/2019	25,000.00 (Retainer)
<b>Total</b>		<b>28,050.80</b>

**Total Now Due \$43,314.00**

**Billings to Date**

	Current	Prior	Total	Received	A/R Balance
Labor	15,263.20	3,050.80	18,314.00		
<b>Totals</b>	<b>15,263.20</b>	<b>3,050.80</b>	<b>18,314.00</b>	<b>-25,000.00</b>	<b>43,314.00</b>



**Invoice**

KCE Structural Engineers, PC  
1818 Jefferson Place, NW  
Washington, DC 20036  
Phone: 202-833-8622 Fax: 202-833-3877  
Fed Tax ID No: 52-0961703



Frederick Klein  
Islamic Republic of Afghanistan  
c/o DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004

June 2, 2019 (May 2019 Invoice)  
Project No: 2019-00-17  
Invoice No: 0127198

Project 2019-00-17 Afghan Embassy Structural Investigation & Consultation - East  
Property Line Retaining Wall Failure

**Professional Services from May 6, 2019 through June 2, 2019****Professional Personnel Fee**

	Hours	Amount	
Principal	35.00	15,750.00	
CADD Manager	30.50	4,437.75	
Office Manager	5.00	877.00	
Operations Manager	2.00	272.40	
Administration	1.75	187.60	
Totals	74.25	21,524.75	
<b>Total Labor</b>			<b>21,524.75</b>
<b>Total Additional this Invoice</b>			<b>\$21,524.75</b>

**Outstanding Invoices**

Number	Date	Balance
0127079	4/7/2019	3,050.80
0127080	4/30/2019	25,000.00 (Retainer)
0127138	5/5/2019	15,263.20
<b>Total</b>		<b>43,314.00</b>

**Total Now Due \$64,838.75**

**Billings to Date**

	Current	Prior	Total	Received	A/R Balance
Labor	21,524.75	18,314.00	39,838.75		
Retainer	0.00	25,000.00	25,000.00		
<b>Totals</b>	<b>21,524.75</b>	<b>43,314.00</b>	<b>64,838.75</b>		<b>64,838.75</b>

Electronic copy of this invoice follows by e-mail each month at time of billing.  
frederick.klein@dlapiper.com



صفحه ۱۲۸ از ۲۷

ضمیمه ۱



شماره قرارداد: CBE # LZ26807012022

قرارداد کننده: سفارت جمهوری اسلامی افغانستان

قراردادی: شرکت حفاری و تست خاک ECS

موضوع قرارداد: ارایه خدمات حفاری، نمونه برداری از خاک و تست خاک در دو نقطه به عمق ۴۰ فوت

مبلغ قرارداد: ۱۲۲۵۰ دوازده هزار و دوصد و پنجاه دالر امریکایی

بعد از غور و بررسی و به دلایل متعدد که در مکاتبات قبلی تذکر رفت، تیم کاری سفارت تصمیم اتخاذ نمود تا به منظور جلوگیری از ضیاع منابع دولتی، به جای اجرای اقدامات پایدارسازی موقتی با هزینه بین ۱۰۰۰۰۰ تا ۲۳۰۰۰۰۰ دالر امریکایی، مستقیماً کار بازسازی دایمی دیوار را آغاز نماید. به همین منظور لازم بود تا از عمق ۴۰ فوت هم در ملکیت سفارت و هم در ملکیت همسایه خاک نمونه برداری و تست گردد. سفارت با توجه به استعجالیت موضوع با شرکت های متعدد برای اخذ آفر به ارتباط گردید که متأسفانه به دلیل حجم کار ساختمانی در این فصل تنها یک شرکت حاضر به انجام پروژه گردید. البته مطابق مطالعه و مشوره شفاهی با شرکت های دیگر، هزینه حفاری به عمق ۴۰ فوت در دو نقطه و نمونه برداری از خاک و تهیه نتیجه رسمی تست خاک که توسط شرکت متذکره ارایه گردیده است کاملاً منطقی و عادلانه می باشد. به همین دلیل پروژه متذکره به شکل عاجل با شرکت ECS عقد قرارداد گردید.

در عین حال باید خاطرنشان ساخت روال معمول تدارکات در ایالات متحده امریکا برای خدمات ابتدایی مانند این پروژه، ارایه آفر توسط شخص یا شرکت ارایه کننده و پذیرش آن توسط شخص یا نهاد تقاضا کننده می باشد و ایجاب و قبول بین طرفین حکم قرارداد را ایفا می نماید. به همین دلیل سند ضمیمه من حیث قرارداد رسمی محسوب می گردد.

- ضمیمه ۷ ورق -

تأیید شخص اول سفارت



## AUTHORIZATION FOR PROFESSIONAL SERVICES

ECS Capitol Service, PLLC  
1310 L Street, NW  
Suite 425  
Washington, DC 20005

Phone: 202-400-2188  
CBE # LZ26807012022

ECS is pleased to provide the professional services outlined in the proposed scope of services below. This contract confirms your authorization for the services requested, and your agreement to the incorporated Terms and Conditions under which the services will be provided.

### PROJECT INFORMATION

Project Name:	Embassy of Afghanistan – Retaining Wall	ECS Project No:	TBD
Street Address:	2341 Wyoming Avenue NW	Proposal No:	37:2951-GPR
City, State:	Washington, DC	Zip Code:	20008

### CLIENT INVOICE INFORMATION

Firm:	Embassy of Afghanistan	Attn:	Mr. Barak Rahmati
Mailing Address:	2341 Wyoming Avenue NW	Phone:	202-817-4429
City, State:	Washington, DC	Zip Code:	20008

### PROJECT OVERVIEW

As requested in our phone call on 6/19/19 and subsequent email correspondence, phone and email correspondence with JG Contracting Company, Inc., and review of the provided site drawings (Vika prepared progress print survey dated 5/24/19), we understand the existing site retaining wall at the driveway of the Embassy of Afghanistan has failed. We understand the existing wall is approximately 10-12 feet in height and will be fully replaced. At this time only limited information has been provided; however, we understand a geotechnical subsurface exploration and retaining wall design parameters are required for the replacement wall design. Please note, this proposal has been revised to include the work on the neighbor's property (address of 2325 Wyoming Ave, NW) in addition to the embassy property (address of 2341 Wyoming Avenue NW).

### SCOPE OF SERVICES

Based on our understanding of the project, and the request of JG Contracting Company, Inc., we will perform two borings in the general vicinity of the failed retaining wall structure. Upon completion of the borings, a laboratory test program will be completed and a geotechnical data report will be prepared. ECS will provide soil boring data and the requested laboratory testing only. No other engineering scope is proposed and we understand that JG Contracting will be designing the replacement retaining wall. Please see the subsequent sections below regarding the specifics of our scope of work.

#### Field Services:

As detailed above, the field services performed at the site will include two soil borings advanced to a depth of 40 feet below the existing site grades or refusal, whichever comes first, to explore the subsurface conditions. One boring each will be drilled on the high side (neighbor's property - address of 2325 Wyoming Ave, NW) and low side of the wall (embassy property - address of 2341 Wyoming Avenue, NW). Prior to mobilizing to the site, we will perform a site visit to observe and document the existing conditions and layout the proposed boring locations. We anticipate borings will be performed at the top and toe of the existing wall at drill rig accessible locations as shown in the attached boring location diagram. The borings will be performed using a truck or ATV mounted geotechnical drill rig operated by drill crews under our supervision and advanced within private space. During drilling, four split-spoon soil samples will be taken to a depth of 10 feet and then at standard 5-foot intervals thereafter to boring termination depths. Additionally, we have assumed a maximum of 4 undisturbed samples will be collected from the site to facilitate retaining wall design laboratory testing. Upon completion of the soil borings, the holes will be grouted with cement-bentonite grout to the ground surface.

Prior to drilling, we will obtain the necessary Department of Consumer and Regulatory Affairs (DCRA) and the District Department of Energy and the Environment (DOEE) permit for drilling wells or boreholes on private property in Washington, DC for the boring planned to be advanced on the neighbor's property (2325 Wyoming Ave, NW). Additionally, we will contact Miss Utility to locate underground utilities at the site; however, our experience indicates that Miss Utility will not locate utilities beyond the point of distribution (meters or gauge points) on private property. If private utilities are a concern at the site, ECS can hire a private utility locator to reduce your liability. Please review the assumption sections of this proposal for additional information about private utility locator services and indicate if we should retain these services on the authorization section of this proposal.

#### Laboratory Testing Services:

Upon completion of the field exploration, a laboratory testing program will be performed which will include visual classification of soil samples and limited index testing (four of each: moisture content, Atterberg limits, and grain size analysis). Additionally, retaining wall design laboratory testing including standard proctor and direct shear tests (remolded or undisturbed depending on quality of sample) will be performed on 2 samples collected from the soil borings.



PAJHOK  
ECS Proposal No. 37:2951-GPR  
Afghan News



### Engineering Services:

After the laboratory testing is completed, a geotechnical engineering memorandum will be prepared which will include site observations, details of the subsurface exploration and laboratory test program performed, as well as the results of the explorations and testing. Additionally, retaining wall design parameters ( $\phi$ ,  $c$  and density only), a boring location diagram, subsurface condition boring logs, and subsurface cross section will be included.

### PROFESSIONAL FEES

ECS will provide our services on a lump sum, item basis in accordance with the fees depicted below. The lump sum costs associated with the above scope of services are as follows:

• Field Exploration.....	\$ 4,800.00
• DCRA Permitting & Soil Disposal.....	\$ 1,950.00
• Laboratory Testing.....	\$ 2,300.00
• Engineering Services.....	\$ 2,500.00

### ESTIMATED COST FOR EXPLORATION, LABORATORY TESTING, & REPORTING.....\$11,550.00

Prior to performance of the work, ECS requires a retainer equal to 50% of the total estimated costs to cover the field exploration. Retainer fees are required in full in advance of services. Services rendered beyond the retained amount will be billed at the lump sum rate with payment due upon receipt. If any additional services are requested or required, we will contact your office (or assigned representative) for verbal and written authorization for additional services. Any additional services will be performed in accordance with our project unit rates on a time and material basis. You will only be invoiced for the services actually performed. Please note the following assumptions included on the next page

### ASSUMPTIONS

- Field spoils will be generated during the drilling process and we have assumed they can be disposed of onsite for work completed on the embassy property (ECS will require an area on-site to dispose of the spoils) however; for work completed at the neighbor's property (2325 Wyoming Ave, NW), field spoils as required by Department of Consumer and Regulatory Affairs (DCRA) permits will be containerized and tested for contaminants. Once the contaminants (if any) are determined, we will hire a contractor to properly remove and dispose of containerized materials. ECS will require an area on-site to store containerized spoils until the environmental testing results dictate how the spoils should be disposed. Please note, this will require the on-site storage of said containers for two to three weeks while lab testing is being performed. DOEE also requires the borings to be backfilled with a bentonite slurry.
- Please note per our review of the site photos provided to us, we have assumed no concrete coring will be required to facilitate performance of the soil boring; however, if site conditions require concrete coring, the associated cost will be invoiced at a unit rate of \$40.00/inch for the actual quantities incurred.
- This proposal has been prepared based on the assumption that ALL field operations will be conducted during normal business hours (Monday through Friday, 7am to 5pm); if site access constraints require work to be performed outside of normal business hours or during the weekend, additional charges will apply.
- This proposal has been prepared based on the assumption that the proposed soil borings will be sited on the subject property at a location accessible to an ATV or truck-mounted drill rig. Furthermore, ECS has assumed that the client will arrange/provide access to the subject site, and that any fencing surrounding the requested test areas will be removed and replaced by others. If site access constraints require work to be performed outside the bounds of the subject property (i.e. within public space), additional charges will apply, as well as an extended schedule.
- **We have prepared this proposal assuming DCRA/DOEE permitting requirements do not apply to advance borings within embassy property.** If this is not the case, please notify ECS so we can revise our proposal and obtain a proper DCRA/DOEE permit. If permits are required, we will contact your office to receive confirmation and additional charges will apply. We have assumed a DCRA/DOEE permit is required for the boring advanced at the neighbor's property (2325 Wyoming Ave, NW).
- Contracting a private utility locator is not a guarantee that all utilities within a work site will be identified, but a service that is offered to lower the risk of the owner/client. ECS and our clients have had great success in avoiding utility contact by augmenting the Miss Utility services with a private locator service. Private locator services can identify utility alignments that incorporate significant iron content in the conduit materials. However, private utilities possessing the higher likelihood of not being easily identifiable, beyond the point of distribution, include all utilities not containing significant ferrous (iron) content (examples would include but not be limited to most sanitary sewer alignments, copper or PVC water lines, fiber optic lines without tracer ribbons, copper electric lines with no surface exposure, drainage



tiles/pipes, and irrigation lines). Where a private locator service identifies a potential risk that is not traceable through conventional methods, ECS will notify the client immediately and work to resolve the issue. Additional costs related to the resolution of these potential utility conflicts will be invoiced out per our unit rates, or as negotiated and approved at the time of the occurrence. If ECS should retain these services, please provide authorization.

- Upon completion of subsurface exploration drilling, we will backfill each of the boreholes with grout and patch the asphalt surfaces with cold-mix asphalt (if needed). Typically, we will not provide site restoration beyond what is outlined above unless specifically contracted. Please note that some disturbance to off-pavement/gravel covered surface areas might occur. We will attempt to minimize such disturbance; however, we have not budgeted for site restoration of the site including filling of tire ruts, seeding of lawn areas, or the planting of trees. If necessary, additional site restoration can be provided at an additional cost.

#### SCHEDULE

Upon authorization to proceed, we will obtain the required drilling permit. Based on our recent experience with permitting requirements in Washington, DC, we anticipate it may require about 1.0 to 2.0 weeks to obtain the drilling permit. Once we obtain the permit and Miss Utility is cleared, we anticipate being able to mobilize to the site within approximately 5 days after the appropriate on-site personnel have been informed. We anticipate the field drilling operations will require 1-2 days, and the laboratory testing, after field operations are completed, will require about 5 to 7 days. Therefore, for time budget purposes, the entire scope should take up to three to four weeks from the receipt of the permit through report submission. Verbal and preliminary findings can be provided within 1 to 2 days of completion of the field work, if requested.

#### PROPOSAL AUTHORIZATION


Please acknowledge your acceptance of this proposal request by signing below and returning one copy to us. Our work will be performed in accordance with the terms and conditions attached. If you should have any questions or comments concerning the information contained in this proposal, please do not hesitate to contact the undersigned at your convenience.

Please indicate your request for the proposed services below:

- Geotechnical Engineering Services (\$11,550.00)
- Retain Private Utility Locator (\$700.00)


☒ Yes ☐ No  
☒ Yes ☐ No

#### Work Authorized By:

Signature:		Date:	06/28/2019
Print Name:	Roy Rahmani	Title:	Ambassador
Firm:	Embassy of Afghanistan		

Signatory warrants his/her authority to bind the entity represented

#### For ECS Capitol Services, PLLC:

Signature:		Date:	6/25/2019
Senior Project Engineer:	Daniel J. Spielvogel, P.E.		

Attachments: Proposed Boring Location Diagram  
Terms and Conditions of Service

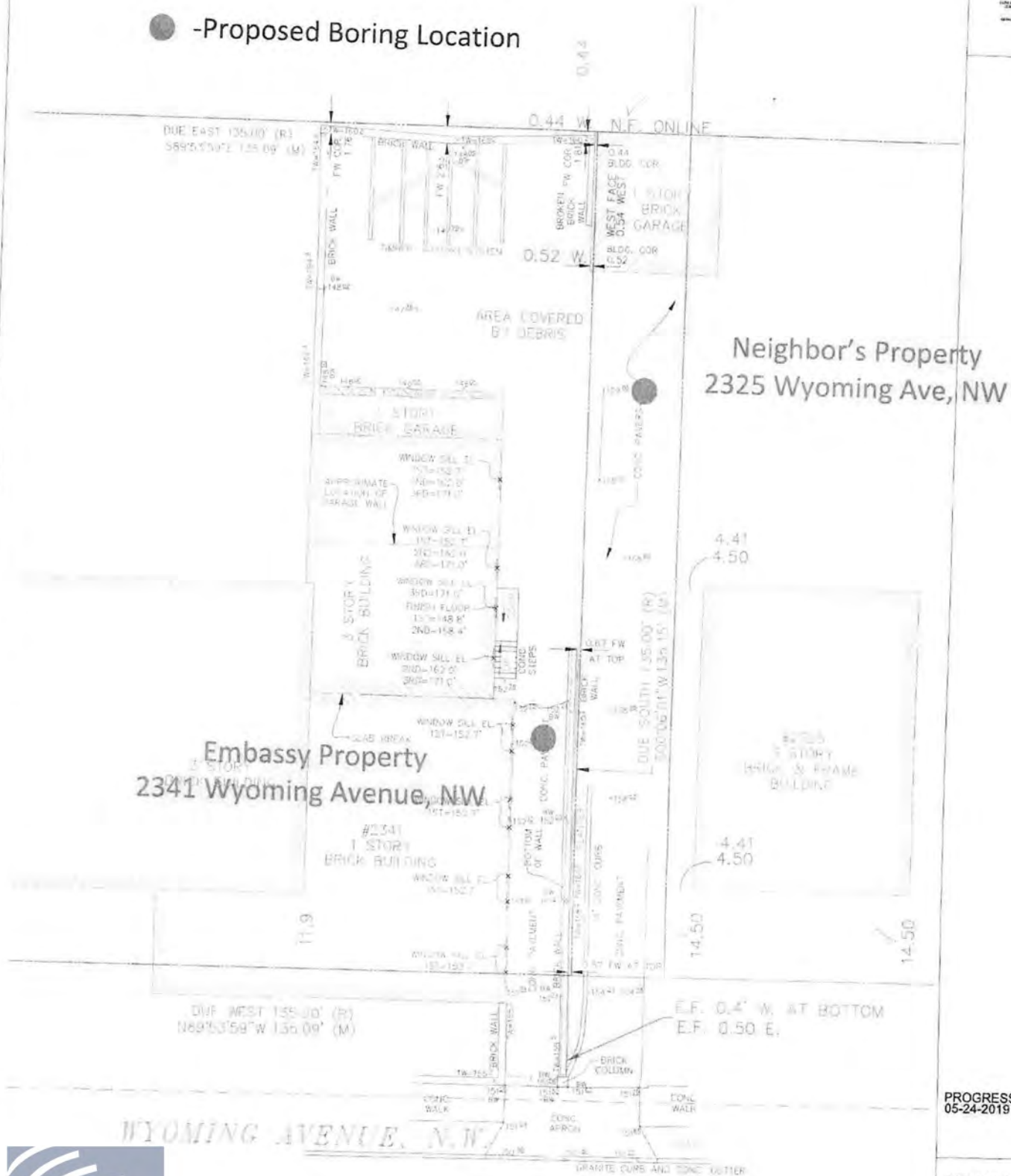




# ECS Proposed Boring Location Diagram



● -Proposed Boring Location



PROGRESS PRINT  
05-24-2019

AFGHAN EMBASSY  
CONCEPT  
OF SHORT TERM  
TEMPORARY  
BRACING

Page 4

F-SK-0524019-01



PAJWOK SHEET TAKEN FROM VIKI DRAWING, 50355-V-BASE, RECEIVED  
05-24-2019

صفحه ۳۳ از ۴۷

ضمیمه ۳



## ECS CAPITOL SERVICES, PLLC TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS Capitol Services, PLLC ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

**1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants.

**2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

### **3.0 STANDARD OF CARE**

**3.1** In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.

**3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

**3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

**3.4** If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

### **4.0 CLIENT DISCLOSURES**

**4.1** Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

**4.2** "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

**4.3** If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

**5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.

**6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

### **7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**

**7.1** CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS

harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

**7.2** CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

**7.3** ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

**7.4** CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

### **8.0 UNDERGROUND UTILITIES**

**8.1** ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

**8.2** CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

**8.3** CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.

### **9.0 SAMPLES**

**9.1** Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.

**9.2** Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.

### **10.0 ENVIRONMENTAL RISKS**

**10.1** When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

**10.2** When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

**10.3** Unless explicitly stated in the Scope of Services, ECS will neither subcontract nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

**10.4** In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

**10.5** Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.



- 10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

#### 11.0 OWNERSHIP OF DOCUMENTS

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, its licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

#### 12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

#### 13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

- 14.0 CERTIFICATIONS - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to

the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

#### 15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
- 15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

#### 16.0 DEFECTS IN SERVICE

- 16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

- 17.0 INSURANCE - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

#### 18.0 LIMITATION OF LIABILITY

- 18.1 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.
- 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
- 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$40,000, or the total fee for the services rendered, whichever is greater.
- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage,



or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.

#### 19.0 INDEMNIFICATION

- 19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)
- 19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportionate to ECS' culpability. If CLIENT is a HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.
- 19.4 If CLIENT is a RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.
- 19.5 IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.

#### 20.0 CONSEQUENTIAL DAMAGES

- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

#### 21.0 SOURCES OF RECOVERY

- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

22.0 THIRD PARTY CLAIMS EXCLUSION - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

#### 23.0 DISPUTE RESOLUTION

- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed.

Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

#### 24.0 CURING A BREACH

- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

#### 25.0 TERMINATION

- 25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 TIME BAR TO LEGAL ACTION - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 ASSIGNMENT - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 SEVERABILITY - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 SURVIVAL - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.

#### 30.0 TITLES: ENTIRE AGREEMENT

- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendices, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.







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*Privileged and Confidential  
Attorney Client Communication*

April 5, 2019

Hon. Barakatullah Rahmati  
Political Counselor & Director of Communications  
Embassy of Afghanistan  
2341 Wyoming Avenue, NW  
Washington, DC 20008  
USA

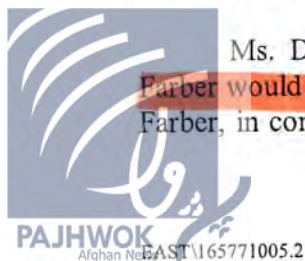
**Re: Washington DC Embassy Wall Collapse  
Proposal from KCE Structural Engineers, P.C.**

Dear Mr. Rahmati:

DLA Piper LLP (US) has reviewed the April 4, 2019, proposal from KCE Structural Engineers, P.C. (PreJob No. APR 2019-C). The KCE proposal appears to be reasonable and customary in form and substance, and as you know, we think very highly of this firm, as noted in our letter to you of April 2, 2019. We recommend that you accept the proposal and proceed with the work, as discussed below.

The consequences of not performing the initial phase of the work in a manner that mitigates further damage to both the Embassy property and the neighbor's property are potentially serious, and could result in significant liability for your Government. If the debris removal or temporary bracing activities are not conducted properly, and Ms. Dittus' property is damaged, I fully expect she will file an action against your Government for significant damages. She might, among other things, argue that this situation has existed for some time and that the Embassy did not take any action to remedy it.

Ms. Dittus has engaged an experienced and well-known litigator, Allen Farber. Mr. Farber would not hesitate to file a lawsuit in the event further damage occurs. I also expect Mr. Farber, in conjunction with Ms. Dittus, will continue to advise the US Department of State and



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Hon. Barakatullah Rahmati  
April 5, 2019  
Page 2

local government authorities that delays in commencement of the work are creating serious risks for her. As you know, Ms. Dittus has claimed that she is unable to use the two vehicles that are parked in her garage, and there is a risk that, if the area near the garage becomes unstable, the garage could collapse, and destroy both the structure and the parked vehicles. Ms. Dittus would blame the Embassy for this and she would seek damages for her losses.

As we discussed this morning with Mr. Kilsheimer, the District of Columbia Government ordinarily requires oversight by a qualified structural engineer, and Mr. Kilsheimer and his firm have already provided the Embassy with valuable advice on the contractor's scope of work. KCE will provide significant value to the Embassy, due to its vast experience on similar matters. Mr. Kilsheimer told us this morning that he would refund to the Embassy any unspent portion of the fees outlined in his proposal at the conclusion of phase I of the project. He also told us that he has given advice to the Embassy as to the east and north walls in the past, and that he was never compensated for this work.

Please let me know if you have any questions or would like to discuss this further. DLA Piper continues to recommend that your Government proceed with the debris removal and temporary shoring as soon as possible, in order to avoid the risk of further damage and potential liability.

Respectfully submitted,

Frederick L. Klein

cc: Leon Medzhibovsky  
Mac Bernstein



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*Privileged and Confidential  
Attorney Client Communication*

April 2, 2019

Hon. Barakatullah Rahmati  
Political Counselor & Director of Communications  
Embassy of Afghanistan  
2341 Wyoming Avenue, NW  
Washington, DC 20008  
USA

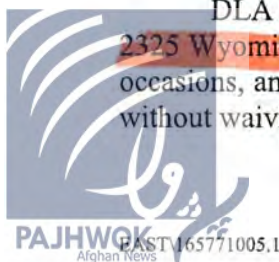
**Re: Washington DC Embassy Wall Collapse**

Dear Mr. Rahmati:

DLA Piper LLP (US) has been advising your Government as to the legal and other matters related to the serious collapse of the brick wall separating the Embassy property from the adjoining property located at 2325 Wyoming Avenue NW. You have provided our firm with certain information concerning this matter, including a Diplomatic Note dated March 25, 2019 from the Office of Foreign Missions ("OFM"). The owner of 2325 Wyoming Avenue apparently alerted OFM, and various District of Columbia emergency management agencies, as to this matter. As you know, I personally visited the Embassy last night.

When you first contacted DLA Piper about this matter, we advised you that, **based on our experience, your Government should immediately engage KCE (structural engineers) and Vika (civil engineers) to advise you as to the best way to proceed to assess the damage and the safest and most appropriate way to repair the damage,** in order to resume the use of the entire Embassy property and to fully comply with US law.

DLA Piper is also advising you as to your legal rights and **potential liability as against the 2325 Wyoming owner.** I have spoken with the attorney for the 2325 Wyoming owner on several occasions, and I have promised to keep him informed as to how we intend to proceed, of course without waiving any of your Government's rights or remedies.



صفحه ۴۷ از ۴۹

ضمیمه ۴



Hon. Barakatullah Rahmati  
April 2, 2019  
Page 2

This is an emergency situation, because the area separating the two properties is highly unstable. KCE advised us that there is serious and immediate risk of additional damage, particularly on account of adverse weather conditions that are prevalent in Washington DC as the weather gets warmer.

DLA Piper recommends that your Government immediately engage KCE and Vika, without seeking any additional bids or proposals, because they are the most qualified professionals in the Washington DC region for a matter of this type. Please be advised that DLA Piper has no financial or other relationship with either of these firms or their principals. We recommended them based on my personal experience over the course of my 40-year career as a real estate lawyer in Washington DC. I will personally be involved in this matter until it concludes, and I will coordinate the activities of the professional firms that your Government engages.

Please feel free to pass this letter along to the appropriate persons in the Embassy or in Kabul, and let me know if you have any questions. I urge you and your colleagues to give this your immediate attention, particularly in light of OFM's involvement.

This is an urgent matter that, if not addressed expeditiously, could result in significant liability and adverse publicity for your Government.

Respectfully submitted,

Frederick L. Klein

cc: Leon Medzhibovsky  
Mac Bernstein



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صفحه ۴۰ از ۴۷

ضمیمه ۴





DLA Piper LLP (US)  
500 Eighth Street, N.W.  
Washington, D.C. 20004 USA  
[www.dlapiper.com](http://www.dlapiper.com)

FREDERICK L. KLEIN  
Frederick.Klein@dlapiper.com  
Tel: 1-202-799-4101

***Privileged and Confidential  
Attorney Client Communication***

April 25, 2019

Hon. Barakatullah Rahmati  
Political Counselor & Director of Communications  
Embassy of Afghanistan  
2341 Wyoming Avenue, NW  
Washington, DC 20008  
USA

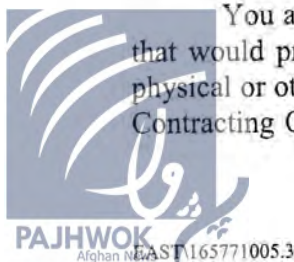
**Re: Washington DC Embassy Wall Collapse  
Agreement with JG Contracting Company**

Dear Mr. Rahmati:

DLA Piper LLP (US) has reviewed the April 25, 2019, Proposal for Phase I Services (JG Project No. 39-9130) (the "Contract") issued by JG Contracting Company that requires counter-signature from the Ministry of Finance. The Contract is attached to this letter.

The Contract is in customary form and contains standard indemnity, insurance and other provisions that would normally be contained in an agreement in the US for services of the type referenced in the Contract. As you know, we negotiated the Contract on your behalf, and as we discussed, the indemnity provisions in the Contract are, in our judgment, fair and reasonable, and appropriate under the circumstances. Please be advised, however, that DLA Piper has not researched JG Contracting Company's financial strength or contacted any references who may have worked with JG Contracting Company in the past, to confirm its qualifications for this assignment.

You advised me that your Government does not carry its own liability or other insurance that would protect your Government, the Embassy or its employees from liability on account physical or other damage caused by the elements or other causes. The insurance procured by JG Contracting Company will cover your Government and its employees and agents from liability



صفحه ۴۱ از ۴۷

ضمیمه ۴



Hon. Barakatullah Rahmati  
April 25, 2019  
Page 2

only with respect to JG Contracting Company's work on the site. Your Government is not protected from any liability that might otherwise arise from the damage caused by the collapsed wall, and that is asserted by Ms. Dittus or any other party, whether for personal injury or property damage. It would not be appropriate for JG Contracting Company, or its insurer, to cover such liability.

Based on the foregoing, we recommend that you proceed with the Contract. DLA Piper, by recommending that your Government proceed with the Contract, is not, however, assuring JG Contracting Company's performance under the Contract. You have engaged KCE Structural Engineers, P.C., to generally oversee JG Contracting Company's work under the Contract, and you may look to KCE for advice and guidance on the technical aspects of the work described in the Contract. Also, this letter should not be construed as a legal opinion of our law firm.

Respectfully submitted,

Frederick L. Klein

Attachment – JG Contracting Company Contract

cc: Leon Medzhibovsky  
Mac Bernstein  
Brian Fielden



EAST165771005.3  
صفحه ۴۲ از ۴۷

ضمیمه ۲





DLA Piper LLP (US)  
500 Eighth Street, N.W.  
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FREDERICK L. KLEIN  
Frederick.Klein@dlapiper.com  
Tel: 1-202-799-4101

June 25, 2019

Hon. Barakatullah Rahmati  
Political Counselor & Director of Communications  
Embassy of Afghanistan  
2341 Wyoming Avenue, NW  
Washington, DC 20008  
USA

**Re: Washington DC Embassy Wall Collapse**

Dear Mr. Rahmati:

As you know, we have spent considerable time identifying a qualified contractor who can repair the damaged wall separating the Embassy property from the adjoining property owned by Gloria Dittus. JG Contracting Company is ready to begin to develop a plan to permanently repair the wall, once soil borings and testing have been completed. This is a customary requirement. We have received proposals from two qualified geotechnical firms for performance of the borings. Both proposals specify an appropriate scope of work, and the prices quoted by each firm is reasonable.

Ms. Dittus' attorneys have tentatively approved a course of action we outlined during a meeting at the Embassy on June 12<sup>th</sup>, and a call with JG on June 17<sup>th</sup>. Ms. Dittus will grant access rights to the contractor and the contractor has agreed to provide appropriate insurance coverage to Ms. Dittus while the work is being performed.

Both the Office of Foreign Missions and the District of Columbia Government have demanded on multiple occasions that your Government authorize commencement of the work without further delay, due to the serious safety issues presented by the damaged wall. The District of Columbia Government could decide to condemn the Embassy building – that is, to prohibit physical access to the property – until the work is completed.

Your Government will need to do the following:

1. Select a geotechnical engineer, and then execute a contract with the geotechnical engineer for performance of the soil borings. Your Government will need to pay



۴۷ از ۴۳ صفحه

ضمیمه ۲



Hon. Barakatullah Rahmati  
May 17, 2019  
Page 2

the engineer for the work, pursuant to the signed contract, promptly after the work is completed. The firm may require an advance deposit, as well.

2. Execute the contract with JG Contracting. This contract may require your Government to make an advance payment, and to deposit the full contract amount into an account at a bank in the United States. Funds will be disbursed from the account from time to time as the work proceed. JG will not agree to perform the work unless and until the funds have been deposited, and it has received the advance deposit.
3. Execute an access agreement with Ms. Dittus.
4. Pay the outstanding invoices from Vika (for surveys) and KCE Structural (for structural engineering services). The KCE invoices have been outstanding for more than six weeks. Both firms have provided valuable advice to your Government, and they are entitled to be paid without further delay.

Any additional delays in commencing work could result in material cost if the damaged wall deteriorates further as a result of adverse weather conditions, or if there is personal injury resulting from further damage. Also, the Office of Foreign Missions and District of Columbia Government will continue to demand that the work be completed within a reasonable amount of time.

Please call us with any questions.

Respectfully submitted,

Frederick L. Klein



EAST166324256.4  
۲۷/۱۴۴۲ هـ

۲۷/۱۴۴۲ هـ





The Embassy of  
Afghanistan  
WASHINGTON, DC

Barakatullah Rahmati <b.rahmati@afghanembassy.us>

## Good Morning

Barakatullah Rahmati <b.rahmati@afghanembassy.us>  
To: "Klein, Frederick L." <frederick.klein@dlapiper.com>

Mon, Apr 8, 2019 at 9:47 AM

Thank you.

We are going to make some decisions hopefully today. There is one question that I still don't have an answer for. For the investigation, we will need to dig some holes to take samples in the driveway of the neighbor. Do we need explicit approval from her? Or the general approval that we can work in her property would serve the purpose?

I want some more clarity and explicit explanation from KCE that the investigation is part of their current proposal. The only way I can justify paying some \$50K is to show it can reduce our costs at a later stage.

I will let you know once I have an update.

Thanks,  
Barakat

--

Barakat Rahmati  
Political Counselor & Director of Communications

EMBASSY OF AFGHANISTAN, WASHINGTON, D.C.

+1 2024836410 EXT:1009 AFGHANEMBASSY.US

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On Mon, Apr 8, 2019 at 7:01 AM Klein, Frederick L. <frederick.klein@dlapiper.com> wrote:

I'm in NY today, attending a funeral of the father of a close friend. I just landed. Call my mobile if you need me - the funeral starts at 11. I intend to head back to DC as soon as it's over. **We need to get those contracts signed up.** Allen Farber says he's available to review any agreement that needs to be signed if we need access to neighbor's property. He says he can get it signed even though she is away.

Frederick L. Klein  
DLA Piper LLP (US)  
1-202-799-4101

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صفحه ۴۵ از ۴۷

ضمیمه ۵



The Embassy of  
Afghanistan  
WASHINGTON, DC

Barakatullah Rahmati <b.rahmati@afghanembassy.us>

## FW: Vika Survey Proposal

Klein, Frederick L. <frederick.klein@dlapiper.com>

Fri, Apr 5, 2019 at 12:17 PM

To: "Barakatullah ("Barakat") Rahmati (b.rahmati@afghanembassy.us)" <b.rahmati@afghanembassy.us>,  
"j.banoori@afghanembassy.us" <j.banoori@afghanembassy.us>

Just a reminder about this. Same analysis as with Allyn - higher cost, but better, more accurate and more reliable work than others.

I'm heading into my meeting shortly. Best way to reach me, if something comes up, is to send text.

Frederick L. Klein

DLA Piper LLP (US)

1-202-799-4101

From: Klein, Frederick L.

Sent: Thursday, April 4, 2019 12:05 PM

To: Barakatullah ("Barakat") Rahmati (b.rahmati@afghanembassy.us) <b.rahmati@afghanembassy.us>;  
'j.banoori@afghanembassy.us' <j.banoori@afghanembassy.us>

Subject: Vika Survey Proposal

See attached. As you know, I highly recommend Vika - they are reliable and their work is accurate. Also, Harry Jenkins will make himself available to us for calls, site visits, etc. Let me know how you want to proceed. I know he's more expensive than the others, but he offers a more complete array of services.

Frederick L. Klein

DLA Piper LLP (US)

1-202-799-4101

From: Harry Jenkins, L.S. <hjenkins@vika.com>

Sent: Thursday, April 4, 2019 8:35 AM

صفحه ۴۶ از ۴۷

ضمیمه ۵





The Embassy of  
Afghanistan  
WASHINGTON, DC

Barakatullah Rahmati <b.rahmati@afghanembassy.us>

## Signing Contracts

Barakatullah Rahmati <b.rahmati@afghanembassy.us>

Tue, Apr 16, 2019 at 5:27 PM

To: "Klein, Frederick L." <frederick.klein@dlapiper.com>

Cc: Madina Qasimi <m.qasimi@afghanembassy.us>, Jahid Banoori <j.banoori@afghanembassy.us>, Abdullah Khodadad <a.khodadad@afghanembassy.us>

Fred,

While signing the contract, I want to make sure that we won't be subject to any sort of liability arising from any incident that might occur during the implementation of all the activities.

Can you please kindly make sure we have relevant provisions with VIKa & KCE?

What phrase do I need to ask JG to put into their contract?

Thanks,  
Barakat

On Tue, Apr 16, 2019, 16:50 Barakatullah Rahmati <b.rahmati@afghanembassy.us> wrote:

Dear Fred,

I have been waiting for final paperwork before I could get back to you with a confirmation that you can proceed and sign the contract with VIKa and KCE. I will also call the JG contracting tomorrow to sign the shoring/stabilization contract with them.

We are still waiting for the funds to be transferred to our accounts. I will keep following on that and will keep you posted. But because we have all the paperwork done, I believe we won't need to wait any longer and shall proceed right away.

Please kindly let me know once you signed the contracts. I will remain to be the focal point with these companies at this time.

Best regards,  
Barakat

--

Barakat Rahmati  
Political Counselor & Director of Communications

EMBASSY OF AFGHANISTAN, WASHINGTON, D.C.

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صفحه ۱۴۷ از ۴۷

ضمیمه ۵



سفارت جمهوری اسلامی افغانستان  
واشنگتن دی سی - ایالات متحده امریکا

EMBASSY of THE ISLAMIC REPUBLIC  
of AFGHANISTAN  
Washington DC - United States of America

د افغانستان اسلامي جمهوریت سفارت  
واشنگتن دي سي - د امریکا متحده ایالات

د اهمیت درجه

مهم:

محرم:

عادی:

شماره: ۹۱۲  
تاریخ: ۱۳۹۸/۷/۲۴  
موضوع: امضای قرارداد دیوار  
ضمایم: ۸ ورق

به دفتر محترم معینیت اداره و منابع؛

به پاسخ نامه شماره ۱۲۳۲ مؤرخ ۱۳۹۸/۷/۲۲ آن وزارت محترم و به تعقیب نامه شماره ۸۹۶ مؤرخ ۱۳۹۸/۷/۱۶ این سفارت احتراماً نگاشته می شود؛

به تأسی از فیصله شماره ۳۴۵۷ مؤرخ ۱۳۹۸/۶/۱۱ کمیسیون محترم تدارکات ملی و حکم مؤرخ ۱۳۹۸/۷/۲۱ مقام محترم وزارت امور خارجه، اینجانب رویا رحمانی سفیر کبیر و نماینده فوق العاده جمهوری اسلامی افغانستان در ایالات متحده آمریکا متن قرارداد اعمار دیوار سفارت جمهوری اسلامی افغانستان در شهر واشنگتن دی سی را که قبلاً توسط آقای یما نظام مشاور محترم وزارت مالیه نهایی گردیده بود، با شرکت KADCON به امضاء رسانیدم. قرار است کار اجرایی اعمار دیوار یاد شده به زودی آغاز گردد. گزارش از چگونگی پیشرفت اعمار دیوار وقتاً فوقتاً به آن وزارت محترم ارسال می گردد.

در پیوست متن قرارداد جهت آگاهی آن وزارت محترم فرستاده شد.

با احترام



رویا رحمانی

سفیر کبیر و نماینده فوق العاده

کاپی به:

دفتر محترم معینیت سیاسی

مدیریت محترم عمومی املاک و حفظ و مراقبت







**AIA®**

# Document A101™ – 2017

## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the 10 day of October in the year 2019 RL.  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

The Islamic Republic of Afghanistan  
2341 Wyoming Ave., NW  
Washington, DC 20008  
Telephone Number: 202-483-6410

and the Contractor:  
(Name, legal status, address and other information)

KADCON Corporation  
1053 31st Street, NW  
Washington, DC 20007  
Telephone Number: 202-944-9400

for the following Project:  
(Name, location and detailed description)

2341 Wyoming Ave., NW – Washington, DC 20008

The Architect:  
(Name, legal status, address and other information)

The Contractor is providing design services as set forth in **Exhibit A** and the Owner is not retaining an Architect for this Project. Therefore the duties, obligations and involvement of the "Architect" as used in the Contract Documents shall not apply to this Project

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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**User Notes:**

(1113665367)

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- ☐ The date of this Agreement.
- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☒ Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

From date of receiving advance payment in the amount of 25% of the Contract Sum (the "Advance Payment"). Each Application for Payment shall be reduced by 10% of the Advance Payment amount (then remaining) until the Advance Payment is exhausted.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

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User Notes:

(1113665367)



(Check one of the following boxes and complete the necessary information.)

☐ Not later than ( ) calendar days from the date of commencement of the Work.

☒ By the following date: 6 months after commencement of work

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work  
100%

Substantial Completion Date  
6 months subject to DCRA delays to the project schedule.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Five Hundred Eighty-Six Thousand Dollars and Zero Cents (\$1,586,000.00), subject to additions and deductions as provided in the Contract Documents. Breakdown as following:

Contract Sum \$1,586,000.00

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

§ 4.6 Other:  
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25 day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 5 day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( 10 ) days after the receiving the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. As a condition precedent to payment, the Contractor shall provide a lien waiver from the Contractor on **Exhibit C-1** and each subcontractor on **Exhibit C-2** providing labor or materials in excess of \$25,000 (in the aggregate), which shall include a waiver of lien rights not only on the Project but also with respect to the property adjacent to the East wall, 2325 Wyoming Ave (the "Dittus Property").

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- .5 The reduction in the Advance Payment, as described in Section 3.1; and
- .6 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*



10% Notwithstanding anything to the contrary in this Agreement, the Owner may withhold sufficient amounts in any Application for Payment such that it is holding 10% of the Contract Sum until the conditions for Final Completion and Final Payment have been achieved.

§ 5.1.7.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Contractor.
- .3 a final lien waiver has been received from the Contractor on **Exhibit D-1** and all subcontractors on **Exhibit D-2** providing more than \$25,000 in labor or materials (in the aggregate) which shall include a waiver of lien rights not only on the Project but also with respect to the property adjacent to the East wall, 2325 Wyoming Ave (the "Dittus Property").

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Contractor's final Certificate for Payment, or as follows:

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

9 %

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

N/A

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2017

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

15% of remaining contract amount.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

*(Name, address, email address, and other information)*

Roya Rahmani  
2341 Wyoming Ave., NW  
Washington, DC 20008

Yama Nezam  
2341 Wyoming Ave., NW – Washington, DC 20008  
Telephone Number: 202-483-6410 Ext. 1009

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§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

Raed Kolaghassi  
1053 31st Street, NW  
Washington, DC 20007  
Mobile Number: 703-932-0406  
Email Address: rkolaghassi@kadcon.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents. N/A

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

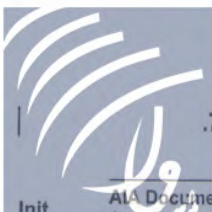
- .5 Drawings N/A

Number	Title	Date
--------	-------	------

- .6 Specifications N/A

Section	Title	Date	Pages
---------	-------	------	-------

- .7 Addenda, if any: N/A



Number

Date

Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

Ex. A-1 - KADCON Proposal - Afghanistan Embassy Walls #4 -08-26-2019

Ex. A-2 - RFP 731P Embassy of Afghanistan 08.24.2019

Ex. A-3 - 2019-8-15\_2651 Geotechnical Report

Ex. A-4 - 50355-V-Base Survey sheet border

Ex. A-5 - 50355-Wall Dimension Worksheet

Ex. A-6 - 50355-Wall Cross Sections

Ex. A-7 - 8135A - Subsurface Utility Level 9 Designation Worksheet

Ex. B - Insurance

Ex. C - Interim Lien Waiver

Ex. D - Final Lien Waiver

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

☐ The Sustainability Plan: N/A

Title

Date

Pages

☐ Supplementary and other Conditions of the Contract: N/A

Document

Title

Date

Pages

**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

N/A

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

**The Islamic Republic of Afghanistan**

By: 

Name: **Roya Rahmani**

Title: **Ambassador**

*(Table deleted)*

**KADCON Corp.**

By: 

Name: **Raed Kojaghassi,**

Title: **Executive-Vice President**

Init.

PAJHWOK

Afghan News

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سفارت جمهوری اسلامی افغانستان  
واشنگتن دی سی - ایالات متحده آمریکا

EMBASSY of THE ISLAMIC REPUBLIC  
of AFGHANISTAN  
Washington DC - United States of America

د افغانستان اسلامي جمهوریت سفارت  
واشنگتن دي سي - د امریکا متحده ایالات

د اهمیت درجه

مهم:

محرم:

عادی:

شماره: ۹۷۷

تاریخ: ۱۳۹۸/۸/۶

موضوع: پرداخت قسط اول اعمار دیوار سفارت

ضمایم: (۱ ورق)

به معینیت محترم اداره و منابع؛

به تعقیب نامه شماره ۹۱۲ مؤرخ ۱۳۹۸/۷/۲۴ این سفارت احتراماً نگاشته می شود؛

به تأسی از فیصله شماره ۳۴۵۷ کمیسیون محترم ملی تدارکات و با در نظر داشت قرارداد امضا شده میان این سفارت و شرکت KADCON، شرکت متذکره خواهان پرداخت قسط اول ۲۵٪ از هزینه اعمار دیوار سفارت جمهوری اسلامی افغانستان در شهر واشنگتن دی سی که مجموعاً مبلغ سیصد و نود شش هزار و پنجاه و سه ۳۹۶۵۰۰ دلار آمریکایی می گردد، شده است. در پیوست انویس شرکت KADCON که ۲۵٪ یاد شده را مطالبه می نماید فرستاده شد.

خواهشمند است موضوع را از طریق خویش به ادارات مربوطه منعکس ساخته تا مبلغ ۳۹۶۵۰۰ دلار آمریکایی جهت پرداخت به شرکت یاد شده به حساب سفارت جمهوری اسلامی افغانستان در شهر واشنگتن دی سی منتقل گردد.

با احترام.

رویا رحمانی

سفیر کبیر و نماینده فوق العاده



**KADCON****KADCON Corporation**1053 31st Street, NW  
Washington, DC 20007**Phone:** (202) 944-9400**Fax:** (202) 944-9401**Invoice****Invoice Number**

1019-05

**Invoice Date**

10/16/2019

**Bill To:** The Islamic Republic of Afghanistan  
2341 Wyoming Ave., NW

Washington, DC 20008

**Job address:**

2341 Wyoming Ave., NW

Washington DC 20008

Job No	Customer Job No	Customer PO	Payment Terms	Due Date
191004			Net 30 Days	11/15/2019
Quantity	Description		Rate/Unit	Price
1.00	Advance Payment of 25%		396,500.00	396,500.00



<b>Subtotal</b>	<b>\$</b>	396,500.00
<b>Retainage</b>	<b>\$</b>	0.00
<b>Total Due</b>	<b>\$</b>	<b>396,500.00</b>

*Thank you for your business!*