



Municipality of Princeton

Municipal Building
400 Witherspoon Street
Princeton, NJ 08540-3496

Department of Community Development
Office of the Engineer
Telephone (609)921-7077
Fax: (609) 688-2027

ROBERT V. KISER, P.E.
Director of Engineering

MEMORANDUM

TO: Robert Bruschi, Administrator

FROM: Robert V. Kiser, P.E., Director of Engineering

DATE: May 20, 2014

SUBJECT: **PSA; Whitman**
Phase I/Preliminary Environmental Assessment for PFARS Properties NTE \$4,300

Proposals were received to complete environmental assessments of the three (3) PFARS properties that are to be deeded to the Municipality of Princeton. These properties are as follows:

- 237 N. Harrison Squad Building
- 8 Clearview Avenue Residence
- 14 Clearview Avenue Residence

The proposals received are attached and are as follows:

Environmental Management Association Farmingdale, NJ	Phase I - Assessment	\$3,750
Whitman Company Cranbury, NJ	Option 1 - Phase I Assessment	\$3,300
Whitman Company Cranbury, NJ	Option 2 - Phase I / Preliminary Assessment	\$4,300

It is noted that the Phase I/Preliminary Assessment (option 2) of the Whitman proposal will fully comply with all NJDEP requirements, where as the standard Phase I assessment (option 1) only follows the ASTM standards.

In consideration of the above, it is recommended that the more comprehensive environmental assessment be completed for these properties by the Whitman firm in the not to exceed amount of \$4,300.

Also, please find attached a resolution and a professional services agreement providing for these services.

Robert V. Kiser, P.E., Director of Engineering

RVK/cc

c: Linda McDermott, Municipal Clerk
Trishka Waterbury Cecil, Municipal Attorney
Kathy Monzo, Deputy Administrator/Director of Finance
Sandy Webb, CFO
Deanna Stockton, P.E., Assistant Engineer
Christine Lewandoski, Historic Preservation Officer/Deputy Zoning Officer
Robert Hough, P.E., Director of Infrastructure and Operations
Rosanna Roberto, Secretary

**RESOLUTION 2014-R
OF THE MAYOR AND COUNCIL
OF THE MUNICIPALITY OF PRINCETON
AUTHORIZING A PRELIMINARY ENVIRONMENTAL ASSESSMENT
FOR PFARS OWNED PROPERTIES**

WHEREAS, the Municipality desires to enter into a professional services agreement in connection with certain activities being conducted by the Municipality, as hereafter more particularly stated, and

WHEREAS, the services to be performed are professional services which are exempt from public bidding under the Local Public Contracts Law.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Municipality of Princeton as follows:

The Mayor and Clerk are hereby authorized to enter into a contract for professional services with **WHITMAN** (hereinafter referred to as "Provider") to assess the potential for environmental concerns, if any to determine the need for further investigation or corrective measures at the property for the purpose of obtaining innocent purchaser protection, as hereafter more particularly stated.

1. The contract so authorized shall require the Provider to provide services and other related duties, as follows:

Provider shall serve as a professional environmental consultant company on behalf of the Municipal Department of Engineering to conduct environmental assessments of 237 N. Harrison Street and of 8 & 14 Clearview Avenue. Specifically, the Provider shall perform the services provided for in their proposal dated May 6, 2014.

Under this Agreement, Provider shall at all times act as an independent professional contractor and not as an employee of the Municipality, and shall have no authority to act as an agent or representative of the Municipality or to enter into any financial or other contractual commitment on behalf of the Municipality without the prior written approval of same granted in accordance with law.

Payment of fees will be made upon the submission to the Provider to the Municipality of invoices in duplicate in the form prescribed by the Municipality not later than the tenth (10th) day of the month following that covered by the invoice, and shall specify in detail the periods for which fees are claimed for the services performed. The provider shall give written notice to the Municipality when the Provider has billed eighty (80%) of the compensation set forth in paragraph I of the Agreement.

2. The form of contract shall include standard provisions common to professional service agreements entered into by the Municipality and shall be subject to approval by the Municipal Attorney.

3. The contract shall be awarded without competitive bidding as a contract for professional services under the provisions of the Local Public Contracts Law because the subject services will be performed by a person or persons authorized by law to practice a recognized profession and whose practice is regulated by law.

4. A notice of this action shall be published in the Princeton Packet as required by law within ten (10) days of its passage.

Councilperson	Absent	Present	1 st	2 nd	Yea	Nay	Abstain	Disqualified
Ms. Butler								
Mrs. Crumiller								
Ms. Howard								
Mr. Liverman								
Mr. Miller								
Mr. Simon								
Mayor Lempert								

I, Linda S. McDermott, Clerk of the Municipality of Princeton, do hereby certify that the above is a true and complete copy of a resolution adopted by the Mayor and Council of said Municipality at a meeting held May 27, 2014.

IN WITNESS WHEREOF, I hereunto set my hand and affix the corporate seal of said Municipality, this May 27, 2014.

Linda S. McDermott
Municipal Clerk

**MUNICIPALITY OF PRINCETON
PROFESSIONAL SERVICES AGREEMENT 2014**

AGREEMENT, made this ____ day of May, 2014, by **Whitman, 7 Pleasant Hill Road, Cranbury, NJ 08512** (hereinafter referred to as "Provider"), and the Municipality of Princeton, a municipal corporation in the County of Mercer and State of New Jersey (hereinafter referred to as the "Municipality") located at 400 Witherspoon Street, Princeton. New Jersey 08540.

WHEREAS, the Municipality wished to enter into a professional service agreement with the Provider for the performance of professional services in connection with certain activities being conducted by the Municipality, as hereafter more particularly stated in the Providers' proposal dated **May 14, 2014** hereby attached; and

WHEREAS, the services to be performed are professional services which are exempt from public bidding under the Local Public Contracts Law. N.J.S.A. 40A:11-1 et seq., and

NOW, THEREFORE, in consideration of the mutual obligations hereafter set forth, the parties hereto agree as follows:

1. STATEMENT OF WORK: The Provider shall use its best efforts to perform professional services at the **PFARS properties** project as follows:

1. Option 1 (outlined in the attached proposal)	\$4,000
Phase I/Preliminary Assessment	\$300
Environmental Lien Searches (3 total)	\$4,300

Under this Agreement the Provider shall at all times act as an independent professional contractor and not as an employee of the Municipality and shall have no authority to act as an agent or representative of the Municipality or to enter into any financial or other contractual commitment on behalf of the Municipality without the prior written approval of same granted in accordance with law. This Agreement shall be supplemented by the terms of the Provider's proposal including the standard provisions of the proposal except where such terms are contradicted by the terms of this Professional Services Agreement in which case the terms of this Agreement shall apply. The Agreement will be effective from May 27, 2014 through December 31, 2014 subject to available budgetary funding.

2. PAYMENT:

- a. **Not to exceed total fee of four thousand three hundred (\$4,300).**

- b. **Rendition of Invoices:** Payment of fees and reimbursement for such expenses incurred will be made upon the submission by the Provider to the Municipality of invoices in duplicate in the form prescribed by the Municipality not later than the tenth (10th) day of the month following that covered by the invoice, and shall specify in detail the periods for which fees or other compensation are claimed, the services performed, and an itemized listing of all expenses incurred for which reimbursement is claimed. The Provider shall give written notice to the Municipality when the Provider has billed eighty percent (80%) of the compensation set forth in paragraph 2.a of this Agreement.

3. TERMINATION.

This Agreement shall be effective for the period provided above, although it may be sooner terminated, with or without cause for any reason whatsoever, at any time by the Municipality by giving thirty (30) days written notice to the Provider.

4. NON-CONFLICTS OF INTEREST.

The Provider represents that neither it nor its firm is now performing and expressly agrees to refrain during the period of effectiveness of this Agreement from so performing, any professional services for any person, firm or corporation which results or might result in a conflict of interest between the Provider and the Municipality, directly or indirectly. The Provider agrees to disclose in writing to the Municipality any and all such conflicts of interest, which may arise, giving full particulars.

5. TITLE TO DATA AND PROPERTY PRODUCED BY THE PROVIDER.

The Provider agrees that title to and all rights and other legal interest in all correspondence, Memoranda, records, data, analysis, graphs, reports, physical property and other subject matter prepared, procured or produced in the rendition of services hereunder shall vest exclusively and remain jointly with the Municipality and Provider and the Provider shall not have the right to sell, disclose, or make same available to third parties without the prior written consent of the Municipality.

6. CONFIDENTIALITY.

The Provider agrees to, treat and maintain as confidential, and not to disclose to any third party or to use for its own benefit, reproduce or have reproduced, any information or other such document or data obtained, learned or produced as a result of the services rendered hereunder (except to the extent required by law) without the prior written consent of the Municipality, which consent shall not unreasonably be refused, and to both require and furnish copies to the Municipality of an identical covenant executed by all agents, employees, or subcontractors of the Provider participating in the rendering of the services hereunder.

7. COMPLIANCE WITH LAWS.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The contractor or subcontractor where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975. c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act;

The contractor or subcontractor agrees to attempt, in good faith, to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975. c. 127. as amended and supplements from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975. c. 127, as amended and supplemented from time to time;

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions;

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions;

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

8. COMPLETE AGREEMENT.

This Agreement and any attachments hereto or incorporated by the reference represents the entire contract between the parties and shall take precedence over all other prior or existing

understandings or agreements, if any, whether oral or written, and shall not be modified, assigned or transferred except upon the written consent of both parties hereto. All notices by either party to the other required or permitted hereunder may be sent by regular mail to their respective addresses first set forth above unless sooner revised by written notice.

WITNESS

MUNICIPALITY OF PRINCETON

Linda S. McDermott, Clerk

By: _____
Elizabeth Lempert, Mayor

By: _____
Todd Gerber, LSRP, President
For **WHITMAN**



Corporate Headquarters
 7 Pleasant Hill Road
 Cranbury, NJ 08512

Tel: 732.390.5858 • Fax: 732.390.9496
 www.whitmanco.com

May 6, 2014

Mr. Robert Kiser, P.E.
 Director of Engineering
 Municipality of Princeton
 400 Witherspoon Street
 Princeton, NJ 08540

RE: Proposal for Phase I/Preliminary Assessment
 Various Properties
 Princeton, Mercer County, New Jersey
Proposal #33015



Dear Mr. Kiser:

Whitman is pleased to provide the Municipality of Princeton with the following proposal to conduct due diligence services at the above-referenced property. This proposal is based on information provided last week.

The following properties located in Princeton, Mercer County, New Jersey will be included in the environmental assessment:

<u>Address</u>	<u>Block/Lot</u>	<u>Size</u>	<u>Current Use</u>
237 North Harrison Street	7307/1	0.27 acre	Princeton First Aid & Rescue Squad
8 Clearview Avenue	7307/2	0.24 acre	Residence
14 Clearview Avenue	7307/3	0.24 acre	Residence

The existing buildings currently use natural gas as a heating source. A brief review of available aerial photographs revealed that the residences were constructed between 1953 and 1956, and initial construction of the rescue squad was between 1957 and 1963.

1.0 OBJECTIVES

The objective of the proposed project is to assess the potential for environmental concerns, if any, to determine the need for further investigation or corrective measures at the property for the purpose of obtaining innocent purchaser protection.

Environmental and Engineering Excellence from Concept to Completion

2.0 APPROACH AND SCOPE OF WORK

The scope of work will be completed in accordance with American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments, E1527-13 and the Environmental Protection Agency (EPA) All Appropriate Inquiry (AAI) Rule, Subsection 312.10 of 40 Code of Federal Regulations 312 (40 CFR §312). In addition, in order to include innocent purchaser protection on a state level, this task will also be completed in accordance with the NJDEP Technical Requirements for Site Remediation (N.J.A.C. 7:26E) and the NJDEP Preliminary Assessment Technical Guidance document, January 2012.

1. Conduct a detailed site inspection noting any possible areas of environmental concern, taking an inventory of all hazardous materials, and documenting all industrial operations at the facility.

It is the Client's responsibility to provide access to all areas of the property and all on-site structures. Additional site visits due to lack of access will incur additional costs. Limitations due to snow cover, pools of water, cover vegetation, storage, or debris, etc. will be noted in the report. A visual inspection of adjoining properties will be performed to the extent that operations are visible from the subject property or street frontage. Potential environmental impacts from other properties that do not adjoin the subject property will be assessed based on a commercial database report (see below);

2. Identification of current and prior uses of the property to the extent that information is readily available through documents on file with municipal and county offices, aerial photographs and/or historical fire insurance maps. Conducting interviews with the current owner and operators is mandatory; and conducting interviews with past owners and operators must be conducted as necessary to achieve the objectives set forth in the AAI Rule. If the property is abandoned and evidence of unauthorized use or uncontrolled access is identified, interviewing the adjoining property owners will be required. Identification of prior land use on adjoining properties will be performed only to the extent that operations are evident on historical documents reviewed in connection with the subject property;
3. Review of federal, state, tribal, and local databases to identify any history of hazardous waste activity occurring at the subject property or at any property within the approximate minimum search distance specified in ASTM Standard E1527-13. This review is performed through purchase of a commercial database report and follow-up telephone interviews with environmental agencies when necessary;
4. Review of any Client provided documentation;

Mr. Robert Kiser, P.E.
Municipality of Princeton
Proposal #33015
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5. Review associated files at the New Jersey Department of Environmental Protection (NJDEP), if appropriate;
6. Obtain searches for recorded environmental liens and activity use limitations for the subject property. Cost is based on the number of block and lots associated with the subject property;
7. Explanation of the relationship of the purchase price to the Fair Market Value (FMV) of the property if the property was not contaminated (**Responsibility of the User to provide this information to the EP**);
8. The User must provide Whitman with any specialized knowledge which they may possess with respect to environmental conditions of the property and adjoining properties;
9. All findings will be summarized in a Phase I Environmental Site Assessment/Preliminary Assessment Report (Phase I/PA) which is a detailed technical document that includes the following information:
 - Detailed site plan (**survey or plot plan will be needed**);
 - Detailed site history and use of property;
 - Description of industrial operations;
 - Inventory of all hazardous operations;
 - Inventory of all hazardous materials and a description of all material storage;
 - Documentation of all spills and discharges;
 - Evaluation of any previous soil and/or ground water data; and
 - Evaluation of areas of potential environmental concern

2.1 Additional Items Outside of ASTM Standards

In addition, the report will also include the following:

1. Identification of the potential for the presence of any suspected asbestos containing material (ACM) or lead paint. Buildings constructed before 1981 may contain asbestos. Residential buildings constructed before 1978 may contain lead-based paint.
2. Identification of wetlands and flood plains as indicated on state or federal maps.



3. Determine if the subject property was likely used for agricultural purposes prior to site development. During the last few years, there have been numerous instances where pesticides and/or herbicides have been found at agricultural properties being redeveloped for residential use. In some cases, the concentrations of organic and inorganic (i.e., heavy metals) constituents present in soils exceeded the New Jersey Soil Remediation Standards (NJSRS).
4. Review of any provided documents, pertinent to the subject property as identified in this proposal. If documentation is provided beyond what was discussed prior to the onset of this project, either from the Client or local, state and federal agencies, additional costs may be incurred.

3.0 COST

The estimated cost options to complete the Scope of Work are outlined below. If additional costs become necessary to complete the project due to unforeseen circumstances, the Client will be advised. If files are available for review at the NJDEP, additional costs will be incurred to review the files and incorporate pertinent information into the report.

<u>Activity</u>	<u>Estimated Cost</u>
OPTION 1 (outlined in this proposal)	
Phase I/Preliminary Assessment	\$4,000
Environmental Lien Searches (3 total)	\$300
Total Estimated Cost:	\$4,300

OPTION 2 (lesser tasks, state requirements not met)	
Phase I Assessment	\$3,000
Environmental Lien Searched (3 total)	\$300
Total Estimated Cost:	\$3,300

A purchase order in the amount of the approved scope of work is required to initiate work.

4.0 SCHEDULE

The Scope of Work will be completed 4-5 weeks from receipt of written authorization to proceed and purchase order, as noted in Section 3.0. If files are available for review at NJDEP,

Mr. Robert Kiser, P.E.
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additional time may be necessary to access the files and incorporate pertinent information into the final report.

5.0 FEE STRUCTURE

If the Scope of Work varies at the Client's request, the fee structure for this work is included in Attachment 1 as part of this proposal and will be a part of the Agreement between the Municipality of Princeton and Whitman.

6.0 PROPOSAL PERIOD

This proposal is valid for a period of 45 days.

7.0 TERMS AND CONDITIONS

Whitman's Standard Terms and Conditions are included as Attachment 2 as part of this proposal and will be a part of the Agreement between the Municipality of Princeton and Whitman.

8.0 RELIANCE ON PHASE I REPORT

The Phase I Environmental Site Assessment Report is intended for use by Municipality of Princeton and their lender (if applicable). The Phase I report can be relied upon by Municipality of Princeton for a period of 180 days, or until a significant change in land use or an environmental condition(s) occurs on the subject property, whichever is sooner. As per ASTM E1527-13, after 180 days, a follow-up inspection or inquiry will be necessary, at additional cost, to review the findings of the Phase I report and extend the period of reliance. The reliance does not extend to any third party without the express written permission of Whitman.

9.0 SUMMARY

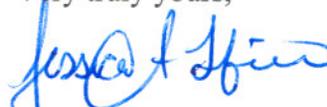
This proposal describes the services to be provided by Whitman to assess the environmental condition of the site located in Princeton, Mercer County, New Jersey. The estimated cost to complete the outlined Scope of Work is \$4,300. If the Client wished to proceed with only the Phase I Environmental Site Assessment, the estimated cost will be \$3,300.



Mr. Robert Kiser, P.E.
Municipality of Princeton
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To initiate the Scope of Work, please return a signed copy of this proposal, along with the required purchase order, as noted above. **Also, please complete the enclosed user-furnished information checklist, as this information is required to be supplied by the user to satisfy the ASTM Standard for Phase I Environmental Site Assessment.** Please contact me at (732) 390-5858 if you have any questions regarding this proposal.

Very truly yours,



Jessica A. Trifiro, LEED AP
Project Manager

JAT/dr

Enclosures

cc: Ira Whitman, P.E., Whitman



Client's or Agent's Signature

Whitman

Type or Print Name of Client or Agent

Todd Gerber, LSRP

Type or Print Name

Name of Company

President

Title

Date

May 6, 2014

Date

Name & Address of Whom to Invoice:

Name

Company

City, State, Zip

Address

Phone Number



ENVIRONMENTAL MANAGEMENT ASSOCIATES, INC.
5303 Route 33/34, Farmingdale, NJ 07727 · Ph: (732) 919-0595 · Fx: (732) 919-0758
www.emaenv.com

"Navigating the Environment" SM

May 12, 2014

Via E-Mail: rkiser@princetonnj.gov

Municipality of Princeton
400 Witherspoon Street
Princeton, NJ 08540
Attention: Robert Kiser, PE, Director of Engineering

RE: Phase I Site Assessment: Three Properties in Princeton, NJ
1) **237 North Harrison Street, Block 7307, Lot 1: 0.27 Acres**
2) **8 Clearview Avenue, Block 7307, Lot 2: 0.24 Acres**
3) **14 Clearview Avenue, Block 7307, Lot 3: 0.24 Acres**

Dear Mr. Kiser:

Based on your request, Environmental Management Associates, Inc. (EMA) has prepared the following cost estimate for performance of a Phase I Environmental Site Assessment at the referenced contiguous properties.

Work Tasks

1. EMA will conduct a property walk-through to identify potential areas of environmental concern on each property.
2. EMA will obtain Federal, State, and Local regulatory files. EMA will conduct a historical title search on the properties, if one is not already available. EMA would also review relevant aerial photographs and Sanborn maps, as available.
3. Based on the resulting information, a Phase I Assessment Report will be prepared.
4. The current owner will provide property access to each property and will be available at the time of the walk-through or by telephone to conduct the necessary property history interview, as necessary. EMA will be provided with a title or other engineer survey of the property that shows accurate property boundaries and improvements.
5. EMA will review any documents made available by Princeton relating to environmental concerns on immediately surrounding properties, if such documentation exists.
6. If Areas of Concern (AOCs) are recognized during the site walk-through that EMA suspects may require additional subsurface site inspection, EMA will bring these AOCs to your attention. EMA will provide recommendations as to investigation of these AOCs with filing of the assessment report.

Robert Kiser, Princeton Municipal Engineering
May 12, 2014
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Cost Estimate – Phase I Only

File search, aerial photo/Sanborn review, property walk-through and report: \$ 3,750.00

Unknown or Contingency Costs

EMA can prepare separate cost estimates for any proposed work outside of the Phase I proposed above, if additional work is recommended based on the results of the Phase I.

The balance of project costs will be billed with the final report to be paid under the terms of the below authorization to proceed and the professional services agreement issued by Princeton. Please do not hesitate to contact me at (732) 919-0595 with any questions regarding this proposal. We look forward to assisting you with this project.

Sincerely,
Environmental Management Associates, Inc.

Nathan Thompson, C.P.G.
Project Manager

Authorization to Proceed

I authorize EMA to proceed with the stated work under the pricing and assumptions listed in their proposal of May 12, 2014 regarding the properties located at 237 North Harrison Street, 8 Clearview Avenue, and 14 Clearview Avenue in Princeton, NJ. Approved EMA invoices will be paid within 30 days of invoice receipt, or as otherwise agreed under purchase order issued by Princeton. Any invoice over 90 days past the issue date will be subject to 1.5 % monthly interest charge at the sole discretion of EMA. If EMA must retain an attorney to obtain payment of an open invoice, I agree to pay all EMA attorney fees and court costs in addition to the invoice balance and any accrued interest charges.

By signing this proposal, the client agrees to attempt to resolve any dispute without resorting to litigation. However, in the event that a claim is made that results in litigation, and the claimant fails to prevail, then the claimant shall pay all costs incurred in defending the claim, including reasonable attorney's fees. Any cause of action must be instituted within two years from the date of the service agreement, regardless of whether the facts giving rise to the claim are not discoverable within that period.

Signed: _____

Name and Title: _____