September 15, 2022 PRIVILEGED AND CONFIDENTIAL

Madam/Sir
City of Burlington
Planning & Development Department
426 Brant Street, PO Box 5013
Burlington, ON
L7R 3Z6

Object: [Phase One ESA Letter Update, Phase One Environmental Site Assessment, and Hydrogeological Investigation Report] – Reliance on Reports [284 – 292 Plains Road East, Burlington, Ontario]

Dear Madam or Sir:

EXP Services Inc. ("EXP") has conducted a Phase One ESA Letter Update, Phase One Environmental Site Assessment, and Hydrogeological Investigation Report on the property located at 284 – 292 Plains Road East, Burlington, Ontario ("Property"). The assessment was carried out on behalf of Corley Developments Inc.as owner of the Property ("Client").

EXP has prepared this letter to allow the use of and reliance upon our reports [Phase One ESA Letter Update, Phase One Environmental Site Assessment, and Hydrogeological Investigation Report] dated June 28, 2022, September 24, 2020, and August 24, 2022 ("Reports") in support of the development application. City of Burlington may rely on the Reports in the same way as the Client with no greater rights than those of the Client as more particularly set out in the Terms and Conditions attached hereto as Schedule A.

The Reports and the scope of work referred to in the Reports were developed and performed in a manner consistent with the accepted level of skill and care ordinarily exercised by reasonable environmental professionals practicing under similar conditions at the time the Reports were prepared.

Use and reliance is subject to the terms, conditions and limitations set out in the Reports, as well as the following:

1. EXP makes no representation or warranty as to the sufficiency of our scope of work for your purposes, nor does EXP make any different or additional representations beyond what is contained in the Reports.
2. The information and conclusions contained in the Reports apply to the Property as it existed at the time of our assessment. Should the site use or conditions change, the information and conclusions in the Reports may no longer apply.
3. EXP makes no representation regarding the marketability of the Property and none should be inferred based on the Reports.
4. Use of the Reports is restricted to lending decisions in respect of the Property made by your institution in the usual course of business. The Reports shall not be referred to or included in materials offering for sale a loan secured by the Property or an interest in a loan secured by the Property.
5. The Reports are intended to be used in its entirety. No excerpts may be taken to be representative of the findings in the assessment. No extract or portion of the Reports is permitted to be produced or referred to in any document.
6. The Reports may not be reproduced except as required by your accountants, regulators or legal advisors, without our prior written consent. In any event, the Reports shall be provided in its entirety, with a copy of this letter attached.

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7. This reliance letter is not assignable and does not confer any right or benefit upon any third party unless written agreement is made between EXP and the third party. EXP accept no responsibility for any loss or damage suffered by a third party as a result of decisions made or actions based on the Reports.

Subject to these conditions, as well as the qualifications and limitations contained in the Reports, the City of Burlington may rely on the Reports for the express purpose for which it was prepared, with no greater collective rights than those of the Client as more particularly set out in the Terms and Conditions attached.

Should you have any further questions, please contact our office.

Sincerely,

EXP Services Inc.



Jason Slidders, L.E.T.
Senior Project Manager
Environmental Services



Rob Helik, P. Eng.
Vice President
Environmental Services

# SCHEDULE A

## TERMS AND CONDITIONS

1. **AUTHORIZATION TO PROCEED**. Upon signing of the Work Authorization form attached to these Terms and Conditions, or upon commencement of the services proposed in the CONSULTANT's Proposal, the CLIENT, and CONSULTANT agree that these Terms and Conditions shall make binding written contract between the CLIENT and CONSULTANT. These Terms and Conditions together with CONSULTANT's proposal shall collectively be referred to as the Agreement.

2. **EXTENT OF AGREEMENT**. This Agreement, including attachments incorporated herein by reference, represents the entire agreement between CONSULTANT and CLIENT and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be altered only by written instrument signed by authorized representatives of both CLIENT and CONSULTANT.

3. **CHANGES**. Work beyond the scope of Services or redoing any part of the Services through no fault of CONSULTANT, shall constitute extra work and shall be paid for on a time and material basis in addition to any other payment provided for in this Agreement. In the event, CONSULTANT's work is interrupted due to delays other than delays caused by CONSULTANT, CONSULTANT shall be compensated based on CONSULTANT's current Fee Schedule for the additional labour or other charges associated with maintaining its work force for CLIENT's benefit during the delay, or at the option of the CLIENT, for charges incurred by CONSULTANT for demobilization and subsequent remobilization. If, during the course of performance of this agreement, conditions or circumstances are discovered which were not contemplated by CONSULTANT at the commencement of this Agreement, CONSULTANT shall notify CLIENT in writing of the newly discovered conditions or circumstances and the impact on the Agreement. CLIENT and CONSULTANT agree to negotiate in good faith any changes to the price, terms and conditions, or schedule of this Agreement. Written notice of changes will be provided by CONSULTANT to the CLIENT by Change Order for the CLIENT's approval.

4. **PAYMENT**. CONSULTANT shall invoice CLIENT periodically for the services performed under this Agreement, including laboratory services, if required. Compensation for such services shall be in accordance with CONSULTANT's current Fee Schedule or the terms of the proposal, which do not include applicable taxes. CLIENT shall pay invoices upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late payment charge of 1.5% per month (18% per year) from the date of billing until paid. The invoice amounts shall be presumed to be correct unless CLIENT notifies CONSULTANT in writing within fourteen (14) days of receipt. Progress billings, when paid, represent acceptance by CLIENT of the invoiced services performed by CONSULTANT. The CLIENT agrees to pay legal fees and costs necessary to collect on past due accounts. If CLIENT fails to pay an invoice when due, CONSULTANT may suspend all services until such invoice is paid in full.

5. **PERMITS, UTILITIES AND ACCESS**. Unless otherwise provided, the CLIENT shall apply for and obtain all required permits and licenses. The CLIENT warrants that it has made all necessary arrangements for right to entry to provide CONSULTANT access to the site for all equipment and personnel at no charge to CONSULTANT. The CLIENT shall also provide CONSULTANT with the location of all underground utilities and structures in the vicinity of the work area, unless otherwise agreed in writing. While CONSULTANT will take all reasonable precautions to minimize any damage to the property, the CLIENT agrees to hold CONSULTANT harmless for any damages to any underground subsurface structures or any damage required for right of entry.

6. **COST ESTIMATES**. If CONSULTANT provides an estimate of probable costs or a budget for the Work that is developed by CONSULTANT during the performance of the Scope of Services, the CLIENT hereby acknowledges that neither CONSULTANT nor CLIENT has control over other professional fees, land development, or other costs related to the entire Project. Therefore, CONSULTANT does not warrant or represent the Project costs will not vary from the Project Budget. Neither CONSULTANT nor the CLIENT has control over the cost of labour, materials or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. CONSULTANT therefore does not warrant or represent that bids or negotiated prices will not vary from the estimate of probable construction cost.

7. **DISPUTES**. Any dispute arising under this Agreement shall first be resolved by taking the following steps. A successive step shall be taken if the issue is not resolved at the preceding step: 1) by the technical and contractual personnel for each Party, 2) by executive management of each Party, 3) by mediation, 4) by arbitration if both Parties agree or 5) through the court system in the Province of Ontario.

8. **STANDARD OF CARE**. CONSULTANT shall perform its services in a manner consistent with the standard of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the services are performed. This Agreement neither makes nor intends a warranty or guarantee, express or implied.

9. **INDEMNITY**. Notwithstanding any other provision of this Agreement, the CLIENT agrees to indemnify, defend and hold harmless CONSULTANT, its officers, directors, employees and subconsultants (collectively "CONSULTANT") against all damages, liabilities or costs including reasonable legal fees and defense costs arising out of or in any way connected with this Project or the performance of the services under this Agreement, excepting those damages, liabilities or costs attributable to the negligent acts or omissions by CONSULTANT.

10. **LIMITATION OF LIABILITY**. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees, to the CLIENT and anyone claiming by or through the CLIENT, for any and all claims, losses, costs or damages from any cause in any way related to the project or the Agreement, shall not exceed the fees paid to the CONSULTANT. CLIENT and CONSULTANT agree that any legal actions arising directly or indirectly from this Agreement and/or CONSULTANT's performance of the Services shall be filed no later than two years from the date the Services have been performed. CLIENT agrees to bring any claims against the CONSULTANT, not any individual employees of the CONSULTANT.

11. **CONSEQUENTIAL DAMAGES**. CONSULTANT shall not be liable for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement.

12. **RESPONSIBILITY**. CONSULTANT is not responsible for the completion or quality of work that is dependent upon information provided by or services performed by the CLIENT or third parties not under the direct control of CONSULTANT. CONSULTANT is not responsible for the acts or omissions or for any damages resulting from the actions of such parties. CONSULTANT does not assert control or assume responsibility for a Contractor not retained directly by CONSULTANT or over a CLIENT's employees, work site, work methods or property.

13. **OWNERSHIP AND CONFIDENTIALITY**. Unless otherwise agreed to by the parties in writing, all drawings, plans, models, designs, reports, photos, studies and other data (the "Deliverables") required to be prepared by or on behalf of CONSULTANT in connection with the Services will become the property of the CLIENT upon full and final payment of the Compensation. The copyright and all intellectual property in the documents and designs shall be retained by CONSULTANT, who grants to the CLIENT a non-exclusive, perpetual, non-transferable and royalty-free license (the "License") to use, disclose and reproduce the Deliverables solely for the purpose of the project. CLIENT will not distribute or convey CONSULTANT's reports or recommendations to any person or organization other than those identified in the project description without CONSULTANT's written authorization. CLIENT releases CONSULTANT from liability and agrees to defend, indemnify, protect and hold harmless CONSULTANT from any and all claims, liability, damages or expenses arising, in whole or in part, from unauthorized use. Information provided by either party with respect to the project's design, supplies, management, costs, description or other pertinent information are confidential. The parties agree not to disclose such information to third parties unless necessary to the project's execution or already a matter of public knowledge.

14. **THIRD PARTY DISCLAIMER.** Any report prepared in connection with the Services are for the sole benefit of the CLIENT. CONSULTANT's report may not be used by any other person or entity without the express written consent of the CLIENT and CONSULTANT. Third parties are subject to the same limit of liability as agreed to in this Agreement by the Client. Any use which a third party makes of CONSULTANT'S report, or any reliance on decisions made based on it, are the responsibility of such third parties. CONSULTANT accepts no responsibility for damages, if any suffered by any third party as a result of decisions made or actions taken based on this report.

15. **FIELD REPRESENTATION**. The presence of CONSULTANT's or its subcontractors' field personnel may be required for the purpose of providing project administration, assessment, observation and/or field testing. Should a contractor(s) not retained by CONSULTANT be involved in the project, CLIENT will advise such contractor(s) that CONSULTANT's services do not include supervision or direction of the means, methods or actual work of the contractor(s), its employees or agents. CLIENT will also inform contractor that the presence of CONSULTANT's field representative for project administration, assessment, observation or testing, will not relieve the Contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If a contractor is involved on the project, CLIENT agrees CONSULTANT shall not be responsible for working conditions on the job site including the safety and security of persons or property.

16. **ENVIRONMENTAL CONDITIONS**. CLIENT shall have responsibility and liability for the environmental conditions on the site. Without limiting the generality of the foregoing, CONSULTANT shall have no liability to the CLIENT or any third party for Mould Related Claims, contaminants, or any other hazardous, dangerous or toxic substance. For the purposes of this section, Mould Related Claims means any claim arising out of or resulting from the actual, alleged or threatened existence, effects, ingestion, inhalation, abatement, testing, monitoring, remediation, enclosure, decontamination, repair, removal or the actual or alleged failure to detect Mould, Mildew or other Fungus in any form. Mould, Mildew, or other Fungus means any plant-like group that does not produce chlorophyll and derives food either by decomposing organic matter from dead plants and animals or by parasitic attachment to living organisms or any substance specifically or commonly referred to as mould, mildew, or fungus, and includes any and all mycotoxins, spores, scents, or other byproducts that are produced by the above-described groups or substances. CLIENT shall be responsible for and promptly pay for the removal and lawful disposal of Mould, Mildew, or other Fungus, contaminants, hazardous materials, asbestos, samples and cuttings unless otherwise agreed in writing. The discovery of such conditions on the site shall result in the issuance of a Change Order to the extent that the services of CONSULTANT are impacted.

17. **TERMINATION**. This Agreement may be terminated by either party upon ten (10) days written notice to the other. In the event of termination, CLIENT shall pay for all charges for work performed and demobilization by CONSULTANT. The limitation of liability and indemnity obligations of this Agreement shall be binding notwithstanding any termination of this Agreement.

18. **SOLICITATION**. Neither Party will, directly or indirectly, for a period of two years from the expiration date of this Agreement, solicit for employment or any other engagement the services of any person who is now employed by the other Party or any affiliate, except in the course of general recruitment efforts.

19. **ASSIGNMENT**. Neither CLIENT nor CONSULTANT shall assign its interest in this Agreement without the written consent of the other.

20. **GOVERNING LAW**. This Agreement is governed by the laws of the Province of Ontario