

# **Exhibit “A”**

Via Email (JSayers@westorange.org)

April 1, 2021

Township of West Orange  
66 Main Street  
West Orange, New Jersey 07052  
Attn: John K. Sayers, Business Administrator

**RE: CONCRETE ADMINISTRATIVE CONSENT ORDER – PROGRESS REPORTS  
TOWNSHIP OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY  
SELECTO FLASH INCORPORATED (FORMER)  
18 CENTRAL AVENUE  
BLOCK 9, LOT 36  
WEST ORANGE, NEW JERSEY  
SRP PI NO. 027054  
MATRIX NO. 17-296**

Dear Mr. Sayers:

Matrix New World Engineering, Land Surveying and Landscape Architecture, P.C. (Matrix) has prepared this proposal for environmental services for the preparation of three progress reports to be in compliance with the Administrative Consent Order (ACO) for the approximate 1,100 cubic yards of concrete impacted at concentrations above the New Jersey Department of Environmental Protection (NJDEP) Direct Contact Soil Remediation Standards at the Selecto Flash property located at 18 Central Avenue in West Orange, New Jersey (Site). The ACO is between the Township of West Orange and the NJDEP and it was executed on October 18, 2018.

The original deadline to dispose of the concrete on Site per the ACO was May 18, 2020. The Township received a one-year extension to May 18, 2021 on April 20, 2020. Another one-year extension was requested by the Township on February 10, 2020 and the request for the extension of the May 18, 2021 deadline was approved by the NJDEP Bureau of Soil Waste Compliance and Enforcement on February 11, 2021. An extension of one-year, to the deadline of May 18, 2022 has been approved for the removal of all contaminated concrete stored on Site with the understanding that all requirements of the ACO will continue to be met.

#### **SCOPE OF WORK**

The scope of services and associated fee is described in detail below:

#### **TASK 1: PREPATATION OF ACO PROGRESS REPORTS**

Matrix will prepare three progress report submissions (April 2021, October 2021, and April 2022) for the approximate 1,100 cubic yards of concrete and associated concrete fines containing contaminants at concentrations above the NJDEP Direct Contact Soil Remediation Standards stored at the Site. This task will also include an inspection of the concrete pile every 6-months. The purpose of the progress reports is to provide the NJDEP with an update on the following items as required by the AOC:

- Identification of the Site and reference of the ACO;
- Status of work at the Site and progress to date;
- Difficulties or problems encountered during the reporting period;
- Actions taken or to be taken to rectify difficulties or problems;
- Activities planned for the next reporting period;
- Required and actual completion dates for each item required by the ACO;
- An explanation of any non-compliance with the ACO schedule; and
- A performance evaluation of all corrective remedial measures implemented to date.

**COSTS**

The following are our fixed fee costs for the tasks described herein. All work will be conducted in accordance with the previously transmitted standard terms and conditions and LSRP Special Provisions.

**TASK 1: PREPATATION OF ACO PROGRESS REPORTS**

Labor .....	\$5,600.00
Expenses (copies, mailings, travel) .....	\$430.0
<b>Total Fixed Fee Cost .....</b>	<b>\$6,030.00</b>

**CLOSING**

All out-of-pocket expenses including, but not limited to, application fees, laboratory testing costs, mylar copies, certified mailings, photographs, blueprints, and special deliveries are considered additional to the proposal items unless specifically noted within the scope of this proposal.

This proposal is submitted solely and exclusively for the use of Township of West Orange for consideration of the professional services of Matrix. Disclosure of this proposal's content to any third party without prior written authorization from Matrix is expressly prohibited.

In addition to the specific items as listed herein, the client may be required to demonstrate compliance with certain permit and approval conditions as may be imposed by one or more of the regulatory agencies. These conditions may require revisions to the plans and/or preparation of additional supporting documentation. This proposal does not include these additional items unless specifically outlined within the scope of this proposal.

**PAYMENT SCHEDULE**

Payment shall be in accordance with the Charges, Billing, and Payment schedule outlined in the previously transmitted Terms and Conditions unless prior written arrangements have been made with Matrix.

Please indicate your acceptance of this proposal by signing in the space provided below and returning one copy to this office. Acceptance of this proposal signifies the clients' understanding that Matrix will not be retained or asked to perform any services unless funding is secured and is available to pay all invoices within 30 days. Receipt of the signed proposal shall be considered authorization to proceed with all items described within this agreement. Any items not intended to be authorized shall be clearly and specifically noted as such within the client's signed and returned proposal.

We thank you for the opportunity to be of service to you on this project. Matrix is prepared to implement the described Scope of Work upon receiving a signed copy of this letter. If you have any questions or require any additional information, do not hesitate to contact us at (973) 240-1800.

Sincerely,



Allison Molnar  
Project Manager

Authorization to Proceed: \_\_\_\_\_  
Name/Title

Date: \_\_\_\_\_

Copy to: Richard Trenk, Esq., Trenk, DiPasquale, Della Fare & Sodono, P.C.  
Mark Moon, Esq., Trenk, DiPasquale, Della Fare & Sodono, P.C.  
Leonard Lepore, Municipal Engineer, Township of West Orange

**ATTACHMENT 1  
TERMS AND CONDITIONS**

**TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**  
**Matrix New World Engineering, Land Surveying and Landscape Architecture, PC**

**Section 1: SERVICES**

Matrix New World Engineering, Land Surveying and Landscape Architecture, PC (Matrix) agrees to perform the professional services (the "Services") as described in the Proposal incorporated herein by reference for the CLIENT on a best efforts, time and materials basis under the terms and conditions set forth below. Matrix reserves the right to amend the contents of the Proposal, if written authorization is not received within 90 days. These Terms and Conditions together with the Proposal constitute the agreement between Matrix and the CLIENT for the Services (the "Agreement").

**Section 2: COMPENSATION**

The CLIENT shall be responsible for all costs specifically enumerated in the proposal. For any costs set forth in the proposal as a range, Matrix shall provide CLIENT with an exact cost as soon as it can be estimated.

CLIENT shall also be responsible for any REIMBURSABLE COSTS not specifically set forth in the proposal. REIMBURSABLE COSTS include: out-of-pocket expenses, the cost of which shall be charged at actual cost plus an administrative charge of fifteen percent (15%) and shall be itemized and included in the invoice. Typical out-of-pocket expenses shall include, but not be limited to, travel expenses (lodging, meals, etc.), job-related mileage at the prevailing IRS mileage rate, long distance telephone calls, printing and reproduction costs, and survey supplies and materials.

**Section 3: CLIENT'S OBLIGATIONS**

To assist Matrix in performance of the Services, CLIENT shall provide Matrix with appropriate material, data and information in its possession pertaining to the specific project or activity.

The CLIENT will advise Matrix of the nature and extent of the hazardous waste at the site. If Matrix discovers after it undertakes the Services that the site is of a different nature of hazard as defined by the client, or if unanticipated hazards are presented, the CLIENT and Matrix agree that the scope of services, schedule and estimated budget fee shall be adjusted as needed to complete the work without injury or damage.

**Section 4: INVOICE PROCEDURE AND PAYMENT**

Matrix will submit invoices to the CLIENT monthly and a final bill upon completion of the Services. Payment is due thirty (30) days from invoice date. CLIENT agrees to pay a finance charge of one and one-half percent (1.5%) per month, or the maximum rate allowed by law on past due accounts. CLIENT will be liable for all court costs, disbursements, and attorney's fees incurred in the collection of any outstanding invoices.

**Section 5: OWNERSHIP OF DOCUMENTS**

All survey notes, drawings, bills of materials, specifications, blueprints, reports, calculations and all other material prepared in connection with the specific project shall be property of the CLIENT and shall be transferred to the CLIENT upon completion of the project and upon receipt of complete payment for the scope of work outlined in the proposal. Matrix may retain a single copy of such information and documents.

**Section 6: CONFIDENTIALITY**

Matrix agrees to keep confidential and not to disclose to any person or entity, other than Matrix's employees and subcontractors, without the prior consent of the CLIENT, all data and information not previously known to and generated by Matrix, or furnished to Matrix and marked CONFIDENTIAL by the CLIENT in the course of Matrix's performance hereunder; provided, however, that this provision shall not apply to data which are in the public domain, or were previously known to Matrix, or were acquired by Matrix independently from third parties not under obligation to CLIENT to keep said data and information confidential. CLIENT shall not restrict Matrix from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction.

The technical and pricing information contained in any proposal submitted by Matrix as to this project, or in the Agreement or any addendum thereto, is to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without express written consent of Matrix.

**Section 7: BURIED UTILITIES**

Matrix will conduct the research that in our professional opinion is necessary to locate utility lines and other man-made objects that may exist beneath the sites surface. The CLIENT recognizes that Matrix's research may not identify all subsurface utility lines and man-made objects. Matrix will take reasonable precautions to avoid damage or injury to any subsurface utilities or structures. The CLIENT agrees to hold Matrix harmless and the CLIENT agrees to pay for damages to underground utilities or structures which are not called to Matrix's attention or correctly shown on plans furnished by the CLIENT or third parties.

**Section 8: DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS**

Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. Matrix and the CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work and compensation for the Services or termination of the Agreement. Matrix agrees to notify the CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The CLIENT encourages Matrix to take measures that in Matrix's professional opinion are justified or legally required to preserve and protect the health and safety of Matrix's personnel and the public, and/or the environment, and the CLIENT agrees to compensate Matrix for the additional cost of such work.

In addition, the CLIENT waives any claim against Matrix, and agrees to indemnify, defend and hold Matrix harmless from any claim or liability for injury or loss arising from Matrix's encountering of unanticipated hazardous materials or suspected hazardous materials. The CLIENT also agrees to compensate Matrix for time spent and expenses incurred by Matrix in defense of any such claim, with such compensation to be based upon Matrix's prevailing fee schedule and expense reimbursement policy.

**Section 9: STANDARD OF CARE**

The Services provided by Matrix under the Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee, in fact or by law, whether of merchantability or fitness for a particular purpose or otherwise, is included or intended in the Agreement, or in any report, opinion, document or otherwise.

The CLIENT recognizes that subsurface conditions may vary from those encountered at the location where, and at the time when, borings, sampling, or testing are performed by Matrix and that the data provided by Matrix are based solely on the information available to Matrix. The CLIENT agrees to indemnify and hold Matrix harmless from and against all claims, damages, losses and expenses arising from the interpretation by others of data provided by Matrix.

**Section 10: INDEPENDENT CONTRACTOR**

Matrix shall be an independent contractor in performing the Services and shall not act as an agent or employee of the CLIENT. As such, and subject to the terms and conditions hereof, Matrix shall be responsible for its employees, subcontractors, and agents and for their compensation, benefits, contributions, and taxes, if any.

**Section 11: JOBSITE HEALTH AND SAFETY**

Insofar as jobsite safety is concerned, Matrix is responsible solely for its own employees' and subcontractor's activities on the jobsite, but this shall not be construed to relieve the CLIENT or his contractors from their responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the jobsite.

**Section 12: INSURANCE**

Matrix is protected by: 1) Worker's Compensation Insurance as required by applicable law, 2) General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage, and 3) Professional Liability (Errors & Omissions) with policy limits equal to at least \$1,000,000. Matrix shall provide insurance certificates illustrating the coverage herein defined to the Board prior to commencing work at the site.

Within the limits of said insurance, Matrix agrees to save the CLIENT harmless from and against loss, damage, injury or liability arising from negligent acts or omissions of Matrix, its subcontractors, and their respective employees and agents acting in the course and scope of this project. Matrix shall not be responsible for any loss, damage, or liability arising from any acts by the CLIENT, its agents, staff, and other consultants and subcontractors employed by the Client.

**Section 13: INDEMNITY**

A. Matrix

Matrix agrees to indemnify and hold harmless CLIENT from and against any and all losses, damages, liabilities, and expenses (including, but not limited to, legal fees and costs of investigation) to the extent resulting or arising out of negligence or willful misconduct of Matrix or performance of the Services hereunder, provided that such loss, damage, liability or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and not caused in whole or in part by any acts or omissions of the CLIENT, a third party, or anyone directly or indirectly employed by the CLIENT.

B. CLIENT

The CLIENT, agrees to indemnify and hold harmless Matrix from and against any and all losses, damages, liabilities, and expenses (including, but not limited to, legal fees and costs of investigation) to the extent resulting or arising out of negligence or willful misconduct of the CLIENT, or anyone directly or indirectly employed by the CLIENT, or the performance of the CLIENT's obligations under the Agreement, any non-conforming wastes waste(s) or discrepancies in the pertinent manifest(s) as defined by applicable regulations, or an condition existing at the work site(s) prior to the date of the Agreement or caused by anyone directly or indirectly employed by the CLIENT.

**Section 14: LIMIT OF LIABILITY**

Notwithstanding any other provision contained in the Agreement

- A. In no event shall Matrix, its employees, agents, or sub-contractors be responsible for any incidental, indirect, impact, or consequential damages (including loss of profits), liabilities or expenses incurred by the CLIENT or any third party as a result of Matrix's performance or nonperformance of the Services contracted for herein, and the CLIENT waives all such incidental, indirect, impact, or consequential damages.
- B. The obligations of Matrix under the Agreement are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of parent or affiliate of Matrix, or any of their respective officers, directors, shareholders, partners, principals, members, managers, beneficiaries, employees or agents.
- C. Matrix's total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way related to the Agreement from any cause or causes, including but not limited to Matrix's errors, negligence, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the total contract amount for the Services provided by Matrix or the limit of liability available at the time of the claim, whichever is lesser.
- D. To the maximum extent permitted by law, the limitations on damages, the releases from liability, the limitations of liability, and the exclusive remedies provisions expressly provided in the Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of Matrix. The remedies provided in the Agreement are exclusive, except that the CLIENT shall in addition have the right to obtain specific performance and all other injunctive relief that may be available. Matrix disclaims, and the CLIENT waives, any implied warranties of merchantability or fitness for a particular purpose with respect to any equipment or other personal property procured by Matrix and provided to the CLIENT as part of any Services.

**Section 15: PROJECT DELAYS**

If Matrix is delayed at any time in performing the Services for any specific project or activity by an act, failure to act, or neglect of the CLIENT or the CLIENT'S employees or any third parties; by changes in the scope of work; by unforeseen circumstances including delays authorized by the CLIENT and agreed to by Matrix; by acts of force majeure including, without limitation, fires, floods, riots, and strikes; by delays caused by foreign or domestic governmental acts or regulations; or by any cause beyond the reasonable control of Matrix, then the time for completion of the Services shall be extended based upon the impact of the delay. Matrix shall receive an adequate compensation adjustment if the delays caused by any of the above result in changes, require additional services, or result in additional costs to Matrix.

**Section 16: ASSIGNMENT**

Matrix shall not assign the Agreement in whole or part except that Matrix may use the services of persons and entities not in its employ, when it is appropriate to do so. Such persons and entities include, but are not limited to, surveyors, specialized consultants, drilling contractors, and testing laboratories. Matrix's use of others for additional services shall not be unreasonably restricted by the CLIENT provided Matrix notifies the CLIENT in advance.

**Section 17: THIRD PARTY EXCLUSION**

The Agreement shall not create any rights or benefits to parties other than the CLIENT and Matrix, except such other rights as may be specifically called herein.

**Section 18: SEVERABILITY**

If any clause or section of the Agreement shall be deemed void or invalid, such a decision shall only apply to that particular section(s) and shall not render the rest of the Agreement invalid. The balance of the Agreement shall remain in force.

**Section 19: TERMINATION**

Matrix may terminate the Agreement upon five (5) days' notice if the CLIENT defaults in the payment for the Services or for any other material default by the CLIENT under the Agreement. The CLIENT or Matrix may terminate the Agreement upon fourteen (14) days' notice for any reason which may arise or for no reason. In the event of such termination of the Agreement for any reason which may arise or for no reason, the termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall affect termination of the cause therefore, the CLIENT shall within thirty (30) calendar days of termination remunerate Matrix for the Services rendered and costs incurred (including all reimbursable costs hereunder), in accordance with Matrix's prevailing rate schedule.

**Section 20: GOVERNING LAW**

Unless otherwise provided in an addendum, the law of the State of New Jersey will govern the validity of the Agreement, its interpretation and performance, and remedies for contract breach or contract breach or any other claims related to the Agreement.

**ATTACHMENT 2  
FEE SCHEDULE**



## 2021 FEE SCHEDULE

TITLE	HOURLY RATE
Executive Engineer	\$275.00
Principal	\$230.00
Senior Technical Director	\$200.00
Senior Project Manager	\$190.00
Technical Director	\$180.00
Senior Technical Manager	\$170.00
Project Manager	\$160.00
Senior Project Professional	\$155.00
Project Professional	\$150.00
Senior Project Specialist	\$145.00
Project Specialist	\$140.00
Senior Technical Professional	\$130.00
One-Man Robotic Crew	\$125.00
Senior Technical Specialist	\$115.00
Technical Specialist	\$105.00
Senior Data/Field Specialist	\$100.00
Second Survey Crew Member	\$100.00
Data/Field Specialist	\$90.00
Senior Technical Assistant	\$85.00
Technical Assistant	\$80.00
Junior Technical Assistant	\$75.00
Junior Data/Field Technician	\$70.00
Data Entry Specialist	\$60.00

## 2021 REIMBURSABLE EXPENSES

ITEM	FEE
Black & White Copy 8½ x 11	\$ 0.20/sheet
Black & White Copy 8½ x 14	\$ 0.30/sheet
Black & White Copy 11 x 17	\$ 0.40/sheet
Black & White Copy 18 x 24	\$ 1.45/sheet
Black & White Copy 24 x 36	\$ 2.85/sheet
Black & White Copy 30 x 42	\$ 4.25/sheet
Color Copy 8½ x 11	\$ 0.40/sheet
Color Copy 11 x 17	\$ 0.80/sheet
Color Copy 24 x 36	\$27.00/sheet
Color Copy 30 x 42	\$40.00/sheet
Mylar 24 x 36	\$27.00/sheet
Mylar 30 x 42	\$40.00/sheet
CD	\$50.00/disc
Robotic per diem	\$250.00
Scanner per diem	\$400.00
Subconsultants	115% of cost
Out-of-pocket expenses	115% of cost

**Additional reimbursables include, but are not limited to, delivery expenses and mileage, charged at Federal prevailing rates.**