

RESOLUTION NO. 1257

A RESOLUTION APPROVING A CHANGE ORDER WITH SENECA COMPANIES TO PROPOSAL #20140048 FOR ADDITIONAL SOIL SAMPLING AND ANALYSIS IN AN AMOUNT NOT TO EXCEED \$5,100.

WHEREAS, the City of West Branch hired Seneca Companies to complete some initial soil sampling and analysis at Dave's Welding & Repairs at 348 Cookson Drive in the amount of \$1,755; and

WHEREAS, that analysis has been reviewed by the City Engineer and provided to the City Council; and

WHEREAS, the City Council of the City of West Branch is now interested in obtaining additional soil sampling and analysis on this site; and

WHEREAS, Seneca Companies has prepared a change order in an amount of \$5,100; and

WHEREAS, it is now necessary for the City Council to approve said change order.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Cedar County, Iowa, that the City Council approves a change order with Seneca Companies to Proposal #20140048 for additional soil sampling and analysis in an amount not to exceed \$5,100.

Passed and approved this 15th day of December, 2014.



Mark Worrell, Mayor

ATTEST:



Matt Muckler, City Administrator/Clerk



BRANCH ADDRESS

7241 Gaines Street Court
Davenport, IA 52806-1353
Phone: 563-332- 8000
Toll-Free: 800-728-6900
Fax: 563-332-9465

The Complete Solution

November 11, 2014

City of West Branch
110 N. Poplar Street
PO Box 218
West Branch, IA 52358

**Re: Change Order to Proposal #20140048
Soil Sampling and Analysis
Dave's Welding & Repair
348 Cookson Dr., West Branch, IA**

Dear City of West Branch:

Seneca Companies (Seneca) is pleased to submit this proposal to conduct soil sampling and analysis at the referenced property. At your request, soil samples will be collected along the western side of the site in a grid pattern at depths to ten feet below ground surface (BGS) to determine if petroleum hydrocarbons are evident in the subsurface. The following scope of work and cost estimate is based on our examination of the site and previous information provided by you.

Scope of Work

Seneca proposes the following:

1. Mobilize an environmental technician and a geoprobe sampler to the site to lay out a grid sampling pattern and collect soil samples.
2. Collect approximately eight soil samples in eight sampling locations for laboratory analysis of regulated petroleum compounds BTEX and T E H at depth locations most likely to have petroleum compounds (based on visual, odor, PID readings or groundwater elevation).
3. Provide a report with sampling locations and analytical results.

Schedule

Work will proceed within two weeks of receipt of the signed contract.

Office Locations

Des Moines, IA • Davenport, IA • Oreana, IL • Baldwin, MS • Kansas City, MO • South Sioux City, NE
Denver, CO • Tulsa, OK • Grand Island, NE • Springfield, MO

www.senecaco.com

Fuel Systems • Environmental Services • Waste Solutions Services • Finishing Systems • Construction Management
Electrical & Automation • Automotive & Fleet

Tank Closure Set Costs

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
1	Mobilizaion and Sampling	1	lump sum	\$ 550.00
2	Geoprobe Sampling and Analysis	8	\$525.00	\$ 4,200.00
3	Report	1	lump sum	\$ 350.00
			SUB TOTAL	\$ 5,100.00
			Tax	\$ -
			TOTAL	\$ 5,100.00

Please review this proposal and contact our Davenport office at 563-332-8000 should you have any questions. If this proposal is acceptable, please sign the enclosed contract and return it to our office. We will countersign the contract and return a copy to you for your records. We appreciate this opportunity to provide this proposal and budget and we look forward to working with you on this project.

Sincerely,
Seneca Companies



Scott E. Killip
Project Manager

Att: Standard Form of Agreement/Terms and Conditions
Customer Application

ec: Dave Schechinger, Veenstra & Kimm

Seneca Companies, Inc. Contract Agreement

THIS AGREEMENT, entered on _____, 2014, between City of West Branch, Iowa, hereinafter called "Client," and Seneca Companies, Inc. hereinafter called "Seneca," is as follows:

The Customer retains Seneca to conduct SOIL SAMPLING AND ANALYSIS AT 348 COOKSON DR. IN WEST BRANCH, IOWA hereinafter called the "Project."

The Customer and Seneca for mutual consideration, agree as follows:

GENERAL CONDITIONS

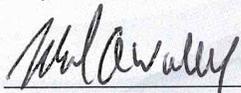
Proposal Number: Change Order to 20140048
Proposal Amount: \$5,100.00
Down Payment: Not applicable
Terms of Payment: See attached Seneca Companies, Inc. Contract Agreement Terms and Conditions
Taxes: Not Taxed
Pricing: Proposal and pricing valid for 60 days

The obligations of the client hereunder are not contingent or conditioned upon the receipt of insurance or other third party payments.

The attached Seneca Companies, Inc. Contract Agreement Terms and Conditions are incorporated into this agreement.

Accepted By:

City of West Branch



Authorized Signature

MAYOR

Title

12/16/14

Date

Seneca Companies, Inc.

Authorized Signature

Branch Manager

Title

Date

Seneca Companies, Inc. Contract Agreement Terms and Conditions

1. **Scope of Work and Payment.** Customer shall pay Seneca for the services in the amounts and at the times set forth in the Proposal and Agreement. Customer agrees to pay all account balances in full within 10 days from receipt of invoice. Balances not received in full within 30 days shall bear an interest charge of 1.5% per month (18% per year). Customer is responsible for all applicable taxes. Customer shall pay a \$30.00 fee for each check returned for insufficient funds.
2. **Price.** This Proposal is expressly contingent upon all conditions being as observed, represented, and warranted at the time of bid. The price covers only those items which are specifically set forth in the Proposal for this project. All other items will be billed to Customer on a time and materials basis.
3. **Returns and Cancellation.** All sales to Customer are final and no returns or cancellations will be allowed except at the discretion and upon terms acceptable to Seneca.
4. **Third Party Payment.** Customer is responsible for full and timely payment of account balances regardless of whether Customer has received payment under any insurance policy, or from any third person or entity who may agree to or may be legally required to pay Customer's account balance. Upon request of Seneca, Customer shall assign to Seneca any and all rights it may have to third party payments. Upon assignment, Seneca is entitled to seek any remedies that Customer would have had for third party payments.
5. **Authorization and Access.** Customer shall provide Seneca with all necessary access to the property upon which services are to be performed. Customer warrants that it has obtained or will obtain prior to performance of the services all necessary permits, licenses, consents, and authorizations required in connection with performance of services set forth in the Proposal.
6. **Warranties.** Seneca is at all times acting as an independent contractor in performance of services under this Agreement. Seneca will perform services using that degree of skill and care ordinarily exercised by other members of the profession under similar circumstances. No other warranty, expressed or implied, is made or intended by Seneca. Seneca does not warrant or represent that a site is not contaminated and Client acknowledges that the risk of contamination cannot be totally eliminated.
7. **Duties of the Customer.** Customer shall provide a written, complete, and accurate description of the site and site conditions to Seneca. Customer warrants that it will disclose all adverse or unfavorable site conditions which may affect this Agreement. Customer shall furnish as requested by Seneca, all reports, data, studies, plans, specifications, or other information deemed necessary by Seneca for performance of all services provided hereunder. Customer represents and warrants that all information provided to Seneca is complete and accurate. Customer represents and warrants that it has and will comply with all applicable local, state, and federal laws, including all applicable insurance requirements.
8. **Utilities and Underground Structures.** Customer shall identify the location of all utilities and underground structures. Seneca will take reasonable precautions to avoid damage to utilities or other underground structures. Customer shall indemnify, defend, and hold Seneca harmless for any damage to utilities or underground structures, and from any claims, liability, or damages resulting from utilities or underground structures that were not properly called to Seneca's attention. Such indemnity shall include payment of litigation costs, experts fees, and attorneys fees incurred by Seneca.
9. **Sampling, Handling and Reporting of Materials.** Customer acknowledges that Seneca has neither created nor contributed to the creation or existence of any contamination at the site and Seneca's compensation hereunder is not commensurate with the potential risk of injury or loss which may be caused by contamination. Seneca shall not be deemed a generator, owner, operator, storer, treater, transporter, arranger, or disposal facility by reason of the services it provides to Customer. All laboratory and field equipment contaminated in performance of the services hereunder which cannot be reasonably decontaminated shall become the responsibility of Customer to decontaminate or to purchase for the fair market value. Customer shall be responsible for complying with all reporting requirements under applicable law. If Customer fails to report a condition which may pose a threat to human health or the environment, Seneca may, but is not required to, report the same.
10. **Force Majeure.** Seneca shall not be liable for failure or delay in performing under this Agreement to the extent that such failure or delay is caused by an event or causes beyond Seneca's control.
11. **Unforeseen Conditions.** If unforeseen conditions arise that affect the scope of services, price of services, time for performance, or the risk involved, Seneca shall notify Customer. Seneca may then, at its sole discretion, modify the scope of work, modify the price, stop work until arrangements satisfactory to Seneca have been made, or terminate the services by notifying Customer in writing. Seneca shall be entitled to the fair and reasonable value of its services through the time of termination.
12. **Limitation of Liability.** Seneca shall be liable only for damages that are a direct result of the negligence of Seneca. Customer agrees that Seneca's total liability to Customer for claims arising out of or arising from Seneca's sale of goods or performance of services under this Agreement shall not exceed \$50,000 or the total fees payable to Seneca for the particular project, whichever is less. Seneca shall not be liable for any special, punitive, incidental, or consequential damages (including without limitation, loss of profits or income, loss of use of property, business interruption, cost of replacing goods or services, or third party claims). Customer recognizes that the work set forth in the Proposal may effect, alter, or damage the property and Seneca shall not be responsible for such damage unless it is a direct result of negligence of Seneca.
13. **Remedies and Indemnity.** In the event of breach of this Agreement by Customer, Seneca may proceed in law or equity to enforce its rights hereunder. Seneca, at its discretion, may elect to proceed by arbitration which shall be binding on the Parties. Customer shall pay all costs and expenses, including attorney's fees, incurred by Seneca in enforcing its rights hereunder. Customer shall indemnify, defend, and hold harmless Seneca from and against all claims, demands, and causes of actions arising out of or resulting from Customer's breach of this Agreement or Seneca's performance of services hereunder.
14. **No Third Party Reliance.** Seneca is providing services, including the generation of any written materials or "work product", for the sole benefit of and reliance by the Customer. Customer shall not distribute or disclose any work product of Seneca without prior written approval of Seneca. There are no intended third-party beneficiaries to this Agreement, and no party other than Customer is entitled to rely on Seneca's services or work product.
15. **Termination.** Seneca may, without prejudice to any right or remedy, terminate its relationship with Customer and suspend all work or delivery of goods upon notice to Customer.
16. **Assignment.** This Agreement may not be assigned by Customer without written consent of Seneca. If assigned, Customer will continue to be bound by this Agreement and will be liable for all terms and conditions contained herein.
17. **Jurisdiction and Venue.** Customer agrees that this Agreement shall be governed by Iowa law and jurisdiction and venue shall be with the Iowa District Court for Polk County or as otherwise required by law.
18. **Entire Agreement.** The written proposal for work, together with any referenced attachments, these terms and conditions, and any applicable Seneca Customer Application Agreement shall constitute the entire agreement between the parties, and any other understanding or representation of any kind shall not be binding upon either party.
19. **Amendments.** Any modification of this Agreement shall be binding only if evidenced in writing signed by each Party.
20. **Severability.** Should any provision herein be deemed invalid or unenforceable, all other provisions shall remain in effect.