



846 Fourth Avenue, Coraopolis, PA 15108
(412) 264-4400 • (412) 264-1200 Fax

Managing Principals:
Kevin A. Brett, P.E.
Ned Mitrovich, P.E.
Jason E. Stanton, P.E.

September 30, 2021

S. O. No. 448-24

VIA EMAIL ONLY
(hartwella@NorthFayetteTwp.onmicrosoft.com)

Mr. Andrew H. Hartwell, AICP
Assistant Township Manager
Township of North Fayette
400 North Branch Road
Oakdale, Pennsylvania 15071

**Subject: Municipal Complex Gas Service Location Services
North Fayette Township, Allegheny County, Pennsylvania
Request for Proposal Summary**

Dear Mr. Hartwell:

LSSE has completed a review of the proposals received in response to the Request for Proposal dated September 22, 2021 for the hydro excavation services to locate the existing gas service lateral at the location that Peoples Gas will connect to the lateral. Three proposals were requested and three proposals were received and are summarized as follows:

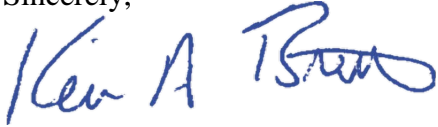
Consultant	Amount
Robinson Pipe Cleaning	\$3,250.00/Day
Badger Daylight Corporation	\$3,880.00/Day
Tudi Mechanical Systems	\$4,350.00/Day

After review of the three proposals, Robinson Pipe Cleaning appears to be the apparent low proposal. It is suggested that the work be awarded to Robinson Pipe Cleaning upon review by the Township Solicitor, and Robinson Pipe Cleaning providing a Certificate of Insurance.

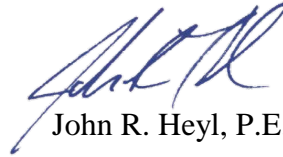
Mr. Andrew H. Hartwell, AICP
Assistant Township Manager
Township of North Fayette
September 30, 2021
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Should you have any questions, please contact John R. Heyl, P.E., CPESC directly (Ext. 236).

Sincerely,



Kevin A. Brett, P.E.



John R. Heyl, P.E., CPESC

KAB/JRH:vcl

Attachments

cc: Michelle McPeak Cromer, Esquire, Solicitor (mcromer@gtnlaw.com)



ROBINSON PIPE CLEANING

A Carylton Company

2656 Idlewood Road
Pittsburgh, PA 15205
p:(412) 921-2100
f: (412) 921-1500
robinsonpipe.com

September 30, 2021

Proposal # 2021-551

Mr. John R. Heyl, P.E.
LSSE, Inc.
846 Fourth Avenue
Coraopolis, PA 15108

Phone: 412-264-4400
Email: John.hey@lsse.com

RE: Hydro/Vacuum Excavation

Dear Mr. Heyl:

In accordance with your request, Robinson Pipe Cleaning Company (RPC) is pleased to present our proposal to LSSE for the services mentioned above in support of your work on a project at your customer's facilities off of Donaldson Road in North Fayette Township, Allegheny County, PA. This proposal is based on information you provided during our telephone conversation and our previous experience with similar projects.

SCOPE OF WORK

RPC understands that LSSE requires vacuum excavation to removal of soil above and around a gas line to verify location. RPC will provide a Hydro-jet/vacuum truck with operator and laborer to assist during the process.

ROBINSON PIPE CLEANING COMPANY WILL FURNISH

RPC will provide a vacuum truck with operator and laborer as well as a short "whip" of disposable flex hose if needed to reach beyond the truck's boom reach to safely remove the cover materials from the underground utilities. Disposition of the collected material will be the responsibility of the facility owner or LSSE. Please note that DOT weight restrictions limit the truck's over the road capacity to ~5 tons.

TO BE FURNISHED BY PURCHASER

- Truck access and rights of way to all work areas, including any protection of traffic and shielding of adjacent surroundings as necessary
- PA One Call notifications prior to project
- Removal of hard surfaces to allow for vacuum access & success
- Permission to use local fire hydrants to fill the 1,500-gallon holding tank of our high-velocity water jetting equipment or make local arrangements to supply our operator with a clean water source
- Safety assistance with facility operations, including lock-out/tag-out of any involved machinery, equipment, or other hazards
- Suitable location for storage of all materials removed during the cleanings
- Restoration and backfill of work area
- Additional traffic control should it be necessary to provide more than standard traffic cones and truck-mounted arrow boards at no additional charge to RPC
- Permission to park and operate our truck within the facility
- Any special permits or fees at no additional charge to us, including NPDES discharge if applicable
- Emergency spill response and waterway contingency plan if required

COST PROPOSAL

RPC will provide mobilization, labor and equipment to perform work as specified herein for the following prices:

Jet/Vacuum Truck w/operator.....\$ 3,250/day

ASSUMPTIONS AND CONDITIONS

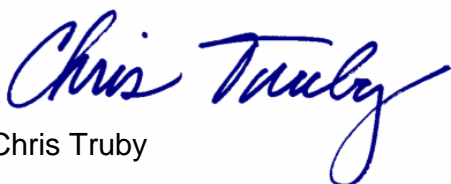
RPC has made the following assumptions in developing this proposal:

- Offer presented herein is valid for 30 days from the date of this proposal.
- Daily price is based on weekday, non-holiday, with prevailing wage rates. Charges are for up to eight hours onsite and will be pro-rated after the first day, subject to a four-hour minimum billing per workday, portal-to-portal from our facility near Carnegie, PA.
- All material will be non-hazardous, compatible with our carbon steel tank, and not require more than Level D ppe for the vacuum truck operator.
- No equipment decontamination will be required
- No provision has been made for "prevailing wage" rates or certified payroll reporting.
- This proposal is subject to the availability of appropriate personnel and equipment.
- Additional project work not specifically addressed by this proposal will be charged at a time and materials rate. Purchaser will authorize additional work that may be required prior to initiation.

RPC appreciates the opportunity of providing this proposal. If you wish to accept the proposal, please indicate your acceptance, subject to the terms and conditions attached, with an authorized signature in the space provided. Return via facsimile to 412-921-1500. **At that time please provide your correct billing address if it is different from the address appearing at the top of this proposal.** If you have any questions about our proposal, please feel free to contact us at 412-921-3600. If you would like to schedule this work, please contact our Scheduling Supervisor, Robb Hartwick at the same phone number and reference this proposal number. Thank you for considering Robinson Pipe Cleaning Company.

Sincerely,
Robinson Pipe Cleaning Company

Client Acceptance


Chris Truby

Signature / Date

Printed name / Title

Purchase order number

INDUSTRIAL GENERAL TERMS AND CONDITIONS
IN ACCORDANCE WITH PROPOSAL # 2021-551

- I. **General Conditions:** These general conditions are incorporated by reference into the proposal and are part of the Agreement under which services are to be performed by the Contractor for the Customer. Contractor will follow Customer's instructions both verbal and written at all times.
- II. **Customer Provided Labor:** Where the Customer provides labor for the Contractor, the Customer will indemnify the Contractor for liability, loss or expense for work related injuries to those laborers not provided by the Contractor. The Customer agrees to waive all rights of subrogation against the Contractor arising out of the work in this Agreement. The customer agrees to comply with all local, state and federal regulations, including regulations governing issues pertaining to the environment, employee safety and health, public safety, and vehicular safety, such as those regulations enforced by the United States Occupational Safety and Health Administration, Environmental Protection Agency, Mine Safety and Health Administration and Department of Transportation. This includes all training of customer's employees and provision of suitable and safe equipment, as required by the applicable governmental regulations.
- III. **Customer's Responsibilities:** Customer will provide mechanical services. Operation and control of Customer's equipment is the Customer's responsibility. If Contractor cannot continue its work due to circumstance caused or allowed by Customer and of which Contractor was not apprised prior to starting the work, an hourly fee will be charged.
- IV. **Damage Limitations:** Under no circumstances will the Contractor be responsible for indirect, incidental or consequential damages. The Contractor also is not responsible for the rendering of or failure to render architectural, engineering or surveying professional services.
- V. **Pre-existing Conditions:** The Contractor will not be responsible for liability, loss or expense (including damage caused by the backup of basement sewers) where the primary cause of the claim or damage is pre-existing conditions, including faulty, inadequate or defective design, construction, maintenance or repair of property or contamination of the subsurface where the condition existed prior to the start of the Contractor's work. Customer is responsible for loss of service equipment caused by pre-existing conditions at the jobsite.
- VI. **Environmental Conditions:** The Customer holds clear title to all waste debris or other materials that the Contractor might handle, process or transport and Customer agrees to supply all necessary manifests. The Customer will indemnify the Contractor for liability, loss and expense caused by discharge, escape, release of liquids, gases or any other material, contaminant or pollutant into the atmosphere or into or onto land, water or property, except to the extent that the Contractor is negligent in performing its work.
- VII. **Indemnification:** The Customer and Contractor will each indemnify the other in proportion to relative fault for liability, loss and expense incurred by the other party resulting from a negligent act or omission in performance of work under this Agreement. The Customer also will indemnify Contractor for liability, loss and expense resulting from Contractor services if the Contractor is acting at the direction or instruction of the Customer, or where the primary cause of any damages is due to information provided by the Customer.
- VIII. **Credit Policy:** Regular Terms are Net 30 Days. The company may charge interest at the rate of 1-1/2% per month on all invoices outstanding 60 days past invoice date.
- IX. **Entire Agreement:** This proposal together with any written documents, which may be incorporated by specific reference herein, constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written. The waiver by Contractor of any term, condition or provision herein stated shall not be construed to be a waiver of any other term, condition or provision hereof.

September 29, 2021

John Heyl
LSSE Civil Engineers and Surveyors
846 Fourth Ave. Coraopolis, PA 15108

RE: Excavation and Gas Service Lateral Identification

Dear John,

We are pleased to submit our proposal to excavate and identify the gas service lateral on behalf of North Fayette Township.

The following is included in our scope of work:

- Tudi Plumbing shall mobilize excavation equipment for a maximum of 2 days
- Tudi Plumbing shall excavate and identify the municipality's gas service lateral in the approximate location identified by the drawing (exhibit plan)
- Should the identification of the gas service take more than one day of digging, the second price below shall apply. If the gas service lateral is identified within one day, the first price shall apply
- Tudi shall fill in the ground around the lateral with existing material and mark accordingly or plate and cone the area in preparation for installations to commence

Warranty:

- One (1) year on parts and labor

Exclusions:

- Any item not listed on this proposal
- Furnishing, testing, or starting of any equipment beyond this proposal
- Structural alterations to the building itself (Tudi will not engage in any structural changes beyond what has been outlined in this scope of work)
- Over-excavation (beyond 3' of depth) and shoring
- Rock Excavation and spoils removal from site
- Backfill material
- Bonds
- Weekend or Overtime Hours
- Inspections or inspection fees
- Engineered drawings
- Prevailing wages

Total Excavation Cost for 1 day: \$4,350.00

Total Excavation Cost for 2 days: \$8,700.00

*Terms: 30% Down Payment – net 30 days.
All prices are valid for 15 days from the above date*

Please feel free to contact me at (724)518-7749 or Don.Holtz@Tudi.com if you have any questions or concerns. I look forward to hearing from you.

Sincerely,

Don Holtz

Don Holtz
Sales - Commercial Plumbing
TUDI Mechanical Systems, Inc.

Agreed and Accepted By:

Authorized Signature

Date

Terms and Conditions

1. Invoices are payable by Customer within the specified terms in this contract. In the event an invoice becomes forty-five (45) days or more past due, Tudi Mechanical may immediately cease all work and/or terminate this Agreement without notice or liability, and the entire Agreement price shall thereupon become due and payable.
2. Tudi Mechanical shall perform all services during its normal business hours as defined as Monday through Friday (excluding federal holidays) from 7 AM to 5 PM.
3. In no event shall Tudi Mechanical be required to alter, move or replace any structural portion of the Customer's premises, and Customer shall afford Tudi Mechanical free and prompt access to all areas and systems along with the ability to cease or initiate operation of the equipment.
4. The Agreement price shall not include any alterations causing extra work, materials or labor, each of which shall automatically become an extra charge reflecting a negotiated fixed-price amount or a time-and-materials cost based on Tudi Mechanical's then prevailing rates.
5. Customer acknowledges and agrees that Tudi Mechanical has no liability or other responsibility for system design, repairs or replacements caused by weather or Acts of God, obsolescence, electrical power failures or burned out fuses, safety tests, valve body and damper removal or installment, low voltage or water pressure, misuse, abuse or improper operation of systems, negligence of Customer or others, vandalism, governmental, legal or insurance requirements, or any other causes beyond Tudi Mechanical's control.
6. Tudi Mechanical's liability for any nonperformance, other misconduct or negligence, with respect to the Agreement, is limited to repair or replacement at its sole option, which Customer acknowledges to be its sole remedy for all purposes under the Agreement. This remedy shall not be available after the term of the Agreement, and shall not apply if failure is due, in whole or in part, to abuse, misuse, accident or modifications.
7. In no event shall Tudi Mechanical be liable for any lost profits or use, increased maintenance or operating costs, any claims by customer's clients or tenants, or any special, indirect or consequential damages whatsoever, whether arising in contract, tort, equity or otherwise.
8. Tudi Mechanical also shall not be liable for any loss, damage, delay or detention in whole or in part caused by delays of carriers, strikes, unavailability of machinery, equipment or materials, lockouts, civil or military authorities, priority regulations, insurrection or riot, forces of nature or Acts of God or any other event beyond its control."
9. In no event shall Tudi Mechanical be responsible for identifying, handling, abating or removing asbestos or any other hazardous or toxic substances, wastes or materials. Upon encountering any such substances, Tudi Mechanical shall have the absolute right to cease all work unless and until such substances are removed, in which case both the time for completing the work and the Agreement price shall be adjusted to fairly reflect such interruption. Customer shall furnish all relevant Material Safety Data Sheets under OSHA's Hazard Communication Standard Regulations to Tudi Mechanical's personnel.
10. Customer must commence any legal action against Tudi Mechanical for any reason whatsoever relating to the Agreement no later than one (1) year after the Commencement Date of the work. Customer agrees to pay all of Tudi Mechanical's attorneys' fees and court costs for any legal action brought by Tudi Mechanical to recover amounts due it under the Agreement.
11. Customer agrees to indemnify, defend and hold harmless Tudi Mechanical, its officers, agents and employees, from and against any and all claims, causes of action, damages, losses and expenses, including but not limited to court costs and attorneys' fees, arising out of or resulting from the performance of the work hereunder, provided that such claim, cause of action, loss or damage is caused in whole or in part by an active or passive act or omission of Customer, its direct or indirect employee, or any other person or entity for whole acts Customer may be liable, whether or not in part due to Tudi Mechanical's negligence.
12. Customer shall be responsible for all taxes applicable to services and/or materials hereunder (included in contract price).

Badger Hydrovac Service Rates

United States

Prepared By: Brian Kozera
Email: BKozera@badgerinc.com
Date: 2021-09-27





Badger Daylighting Corp.

365 Taggart Rd
 Darlington, PA 16115
 "An equal opportunity employer"

RATE SCHEDULE

DATE:	9/27/2021
REFERENCE #:	QT-092721-72744
PREPARED BY:	Brian Kozera

Customer Information			
Company:	LSSE, Inc	Contact Name	John Heyl
Contact Phone #	(412) 264-4400	E-mail:	john.hey@lsse.com
Billing Address:		Title:	Engineering Manager
Bill City/State		Account #	10777091
Service Address			

Scope of Work
Hydroexcavate for natural gas line. Day rate provided.

Service Item	Item Description	Price	UOM
Badger Hydrovac With 2 Man Crew	For the 1st 10 hours	\$ 3,000.00	DAY
Badger Hydrovac With 2 Man Crew Overtime	After 10 hours	\$ 330.00	HR
Mobilization Demobilization		\$ 300.00	DAY
Supply Water		\$ 80.00	EA
Remote Hose		\$ 300.00	EA
Support Truck		\$ 150.00	DAY
3rd Party Service (DISPOSITION)		\$ 200.00	EA
Fluctuating Fuel Recovery			

All work will be done, and rates applied, according to the terms and conditions contained in this Agreement.

Company: _____ PO#: _____
 Name (please print): _____ Title: _____
 Signature: _____ Date: _____
I am authorized to bind the Company



General Notes, Conditions, & Badger Responsibilities:

- 1. Travel rates apply when traveling from the closest Badger Operation to the client's project site.
- 2. Badger will off load material at contracted facility. Travel to and from a designated facility is considered part of the work day and charged at the hourly rate.
- 3. Any additional third party services provided by Badger Daylighting outside of our typical Hydrovac activities shall be charged out at cost +.
- 4. With any Hydrovac project, there are possible additional charges that are application and site specific. For example, items such as water trucks, specialized equipment and attachments (remote hose, etc.), crew trucks, and other items may be required. Rather than provide an extensive listing of all possible considerations, this is best implemented on a project-by-project basis and evaluated at the field operations level. The information presented in this document represents the complete proposal.
- 5. This proposal is valid for 30 days from the date posted on this proposal document.
- 6. Any and all quotes, offers and transactions are pending Credit Approval by Badger.
- 7. Terms of Payment - Net 30 days from date of invoice. Late invoices subject to service fees.
- 8. Zero (0) % retainage is withheld.
- 9. Taxes – tax will be added to quote pricing as required by State/Local governments.
- 10. Currently a fluctuating fuel recovery fee will be applied to all invoices at a monthly calculated rate that is adjusted based upon the average cost of diesel as published by www.eia.gov.

Client responsibilities include:

- 1. Access to the Hydrovac site, including permits and permission from property owners, utilities, and government agents.
- 2. Surface locates, survey marks and traffic control, if needed unless agreed to in writing prior.
- 3. Breaking, removal, and restoration of asphalt and or concrete unless agreed to in writing prior.
- 4. Establish, maintain, and remediate accessible water source and disposal site.
- 5. Specific direction and locations for Hydrovac excavation.
- 6. Backfill and site restoration unless agreed to in writing prior to completing work.
- 7. Materials to secure and cover the excavation unless agreed to in writing prior.
- 8. Shoring, maintenance, and barricading.
- 9. Ownership of the soil and debris removed by the Hydrovac including any soils or material contaminated or suspect.
- 10. Any project delays caused by others that result in downtime of Badger Hydrovac units will be billed at the hourly rates.
- 11. Pay for all specialized training that is required by contractor/owner/Badger to be on the site to work.
- 12. Notify Badger of all billing requirements and any appropriate purchase orders, job numbers, AFE, etc. that would be necessary to release payment to Badger. This must be done prior to the first day of work.
- 13. Notify Badger of any of the following: Certified payrolls, OCIP requirements, prevailing wages.
- 14. Additional insurance requirements over what Badger already has in place.

Client Representative

Badger Representative

Printed Name: _____
 Signature: _____
 Date: _____

Printed Name: _____
 Signature: _____
 Date: _____

I am authorized to bind the Company



BADGER DAYLIGHTING CORP. STANDARD TERMS AND CONDITIONS (USA)

1. Definitions. "Service Provider" shall mean Badger Daylighting Corp. "Buyer" shall mean any party who contracts to purchase Services from Service Provider, as indicated on a service agreement or a statement of work. "Services" shall mean those services and any related goods ordered by Buyer from Service Provider pursuant to a service agreement accepted by Service Provider. "Credit Application" shall mean Service Provider's form of credit application, as may be amended from time to time, the review and written approval of which is a pre-requisite to Service Provider entering into any type of binding agreement with Buyer to provide Services. "USA" shall mean the United States of America.

2. Terms of Service Agreement Acceptance and Complete Agreement

a. Acceptance. Buyer's order for Services is binding only when accepted in writing by an authorized representative of Service Provider, and is accepted subject to all of Service Provider's Standard Terms and Conditions of Services, which constitute the complete agreement between the parties. Buyer's acceptance of delivery and performance of Services evidences Buyer's acceptance of all of Service Provider's Standard Terms and Conditions of Services.

b. No Acceptance. Service Provider's performance under any Buyer service agreement or a statement of work does not constitute an acceptance of any provision of any Buyer service agreement that is different from or additional to Service Provider's Standard Terms and Conditions of Services, and any such different or additional provisions are hereby expressly rejected and are void.

3. Buyer's Obligations.

(a) Services. Buyer shall: (i) cooperate with Service Provider in all matters relating to Services and provide such access to Buyer's premises, and other facilities as may reasonably be requested by Service Provider, for the purposes of performing Services; (ii) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of the service agreement; (iii) provide such Buyer materials or information as Service Provider may reasonably request and Buyer considers reasonably necessary to carry out Services in a timely manner and ensure that such Buyer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary permits and consents and comply with all applicable laws in relation to Services before the date on which Services are to start.

(b) Shipment and Delivery. Any goods provided in relation to the Services are sold EXW Service Provider's Facility Incoterms 2010. The method and route of shipment shall be as mutually agreed in each accepted service agreement. Service Provider shall tender delivery of all such related goods to a carrier for transportation to Buyer's place of business. All costs of transportation, including, without limitation, taxes and standard insurance shall be assessed by Service Provider and borne by Buyer unless otherwise agreed to in writing by Service Provider. Service Provider shall invoice Buyer for all shipping related costs.

All risk of loss shall pass to Buyer when such related goods are made available to the carrier at Service Provider's facility, including, without limitation, all risks of loading, transportation, and shipment. Delivery and acceptance shall not be affected by a delay on the part of Buyer in accepting delivery. Shipment of such related goods held by reason of Buyer's request or inability to receive such related goods will be at the risk and expense of Buyer. Claims for shortages in shipment shall be deemed waived by Buyer unless made in writing to Seller within thirty (30) days from the date of invoice.

4. Buyer's Acts or Omissions. If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Service Provider shall not be deemed in breach of its obligations under the service agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay. breach of its obligations under the service agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. Taxes and Fees. Unless expressly stated and agreed to in writing by Service Provider, quoted prices do not include any shipping and handling charges, sales, use, excise, or similar taxes or duties. Buyer shall pay these taxes directly if the law permits or shall reimburse Service Provider if Service Provider is required to collect and pay them.

6. Representations and Warranties; Limitation of Remedy.

(a) Service Provider represents and warrants to Buyer that it shall perform Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the service agreement.

(b) Service Provider shall not be liable to a breach of the warranty set forth in Section 6(a) unless Buyer gives written notice of the defective Services, reasonably described, to Service Provider with three (3) days of the time when Buyer discovers or ought to have discovered that Services were defective.

(c) The sole and exclusive remedy of Buyer for any liability of Service Provider of any kind, including (i) warranty, express or implied, whether contained in the terms and conditions hereof or in any terms additional or supplemental hereto, (ii) contract, (iii) negligence, (iv) tort, or (v) otherwise, is limited to Service Provider's repair or re-performance of Services. The sole and exclusive remedy for goods related to Services shall be Service Provider's repair or replacement of those related goods the examination of which by Service Provider reveals material defects during the warranty period or, at Service Provider's option, a refund to Buyer of the money paid to Services Provider for such goods. The warranty period shall begin on the date of completion of Services on Service Provider's invoice and shall continue for a period of one (1) year therefrom for all Services. This limited warranty shall not extend to any Services that have been modified, disassembled, altered, changed, damaged, misused, repaired, misapplied or negligently maintained in any manner.

(d) EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 6(a) ABOVE, SERVICE PROVIDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Continued...



BADGER DAYLIGHTING CORP. STANDARD TERMS AND CONDITIONS (USA)

7. Limitation of Liability.

(a) SERVICE PROVIDER'S LIABILITY SHALL BE LIMITED TO THE COST OF REPAIR AND RE-PERFORMANCE OF SERVICES WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY NOTICE BY BUYER. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER ESSENTIAL PURPOSE. IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SERVICE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER. Buyer agrees to indemnify and hold Service Provider harmless from and against all liabilities, claims, or demands of third parties of any kind relating to Services and the use of any related goods arising after performance of Services.

(b) The limitation of liability set forth in Section 7(a) above shall not apply to (i) liability resulting from Service Provider's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Service Provider's negligent acts or omissions.

8. Rejection or Claims. A rejection of Services for non-conformity, or a claim of incomplete performance and/or damage by Buyer, shall not be effective unless it is made, and written notice thereof is given to Service Provider, within thirty (30) days after Services are provided to Buyer; or, with respect to any goods related to Services, within thirty (30) days after such related goods arrive at the destination specified in Service Provider's statement of work. Service Provider reserves the right to inspect the site of supposed non-conforming Services and to determine lack of conformity in its sole discretion.

9. Performance Dates. Service Provider shall use reasonable efforts to meet any performance dates specified in the service agreement, and any such dates shall be estimates only.

10. Failure to Take Delivery. If Buyer fails to take delivery of any goods related to Services, or any part thereof, such related goods not delivered shall be held at Buyer's sole risk in all respects. Service Provider, acting as Buyer's agent and at Buyer's expense, may thereafter store, insure and/or otherwise protect such related goods or may resell same for Buyer's account. The delivery date(s) quoted are based on Service Provider's best estimate of a realistic time when delivery to the carrier will be made, and are subject to confirmation at time of acceptance of any resulting Service Agreement. Service Provider reserves the right to make either early delivery or partial delivery upon prior notice to Buyer as provided in Section 23 hereof and to invoice Buyer accordingly.

11. Title and Risk of Loss or Damage. Title, risk of loss and/or damage shall pass to Buyer when any goods related to Services are made available to the carrier at Service Provider's facility.

12. Payment Terms. All payments are due thirty (30) days from date of invoice in U.S. Dollars, unless otherwise specified by Service Provider. Buyer's failure to make payment when due will be a material breach of the service agreement and these Standard Terms and Conditions of Services. Amounts unpaid after such date shall bear interest from the date of the invoice at a rate of one and one-half percent (1.5%) per month, or eighteen percent (18%) per annum. Service Provider shall be entitled to reimbursement from Buyer for all costs and fees, including reasonable attorneys' fees, incurred by Service Provider in the collection of any overdue amounts. Service Provider, at its sole option and without incurring any liability, may suspend its performance of Services until such time as any overdue payment is made or Service Provider receives assurances, adequate in Service Provider's opinion, that the payment will be promptly made. In the event of such suspension of performance of Services by Service Provider, there will be an equitable adjustment made to the remaining performance schedule and pricing to reflect the duration and cost resulting from such suspension. Buyer may only suspend performance upon Service Provider's written consent. In the event of such Buyer suspension, the performance time will be changed, taking into account the suspension, and Buyer will promptly pay Service Provider for all costs, including related overhead costs, resulting from such suspension. All terms of the Credit Application are incorporated into and are part of this Agreement.

13. Cancellation. Except as otherwise expressly provided in a statement of work, the service agreement shall be cancelled only by mutual written consent of the parties. Notice is hereby given that Service Provider shall not consent to cancellation if Buyer has bound itself to purchase Services. If Buyer is in default by failure to pay any previous invoice within credit terms at the expected date of performance of Services or any part thereof, has not otherwise performed or complied with any of the terms of the service agreement, in whole or in part; or becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or if Service Provider has received any adverse credit information about Buyer, Service Provider may delay performance and/or cancel performance of Services without liability. In the event of U.S. or foreign government intervention, trade restrictions, and/or quotas, which may delay or prevent performance of Services or any part thereof, Service Provider, at Service Provider's option, may cancel the performance of Services without liability. In the event any Services shall become subject to any governmental fees or duties not presently in effect or to any increase in any existing fee or duty, including any antidumping duty or countervailing duty, Service Provider shall have the right to cancel performance of Services without liability.

14. Default. If Buyer breaches or is otherwise in default under the service agreement or under any other contract between the parties hereto, Service Provider at its sole option, may defer performance of Services until the default is cured, or may treat the default as a repudiation by Buyer of the service agreement in its entirety, and hold Buyer liable for such damages as Service Provider may incur, including consequential and incidental damages. For purposes hereof, Buyer's insolvency shall be a default.

15. Waiver. No waiver by Service Provider of any of the provisions of the service agreement is effective unless explicitly set forth in writing and signed by Service Provider. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the service agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

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BADGER DAYLIGHTING CORP. STANDARD TERMS AND CONDITIONS (USA)

16. Force Majeure. Service Provider shall be free from any liability for delay or failure in performance of Services arising from strikes, lockouts, labor troubles of any kind, accidents, perils of the sea, fire, earthquake, civil commotion, terrorist acts, war or consequences of war, government acts, restrictions or requisitions, failure of manufacturers or suppliers to deliver, bankruptcy or insolvency of manufacturers or suppliers, suspension of shipping facilities, act or default of carrier or any other contingency of whatsoever nature beyond Service Provider's control affecting production and performance of Services, including disturbances existing on the date of the service agreement or a statement of work. In such a situation, if performance is not made during the period contracted for, Buyer shall accept performance under the service agreement when performance is made; provided, however, Buyer shall not be obligated to accept performance if performance is not made within a reasonable time after the cessation of the aforementioned impediments or causes.

17. Intellectual Property. All the designs, know-how, innovations, inventions and discoveries related to Services provided under this transaction shall be and remain the property of Service Provider.

18. Confidential Information. (a) All non-public, confidential or proprietary information of Service Provider, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, the "Confidential Information"), disclosed by Service Provider to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of Services and the service agreement is confidential, and shall not be disclosed or copied by Buyer without the prior written consent of Service Provider. Confidential Information does not include information that is (i) in the public domain; (ii) known to Buyer at the time of the disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.

(b) Buyer agrees to use the Confidential Information only to make use of Services, and deliverables.

(c) Service Provider shall be entitled to injunctive relief for any violation of this Section.

19. Integration. The service agreement, these Standard Terms and Conditions of Services, and a statement of work supersede all prior negotiations, representations, agreements, quotes and catalogues, whether written or oral, and shall not be modified, supplemented or interpreted by evidence of course of dealing, course of performance or usage of trade. To the extent the provisions hereof conflict with any prior or subsequent agreement of the parties, these Standard Terms and Conditions of Services will control. Any amendment to these Standard Terms and Conditions of Services must be in writing and signed by both parties.

20. Assignment. Buyer acknowledges that no service agreement or statement of work, nor the obligations represented thereby, may be assigned or delegated, in whole or in part by Buyer, without the prior written consent of Service Provider. Buyer's unauthorized attempt to assign or delegate any rights or obligations shall serve as grounds for termination of the service agreement.

21. Severability. Service Provider and Buyer agree that each and every paragraph, sentence, clause, term and provision of these Standard Terms and Conditions of Services is severable and that, in the event any portion hereof is adjudged to be invalid or unenforceable, the remaining portions shall remain in full force and effect to the fullest extent permitted by law.

22. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Standard Terms and Conditions of Services or the service agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties; and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the service agreement or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the service agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

24. Governing Law; Venue. All matters involving the validity, interpretation and application of these Standard Terms and Conditions of Services will be controlled by the laws of the State of Indiana, United States of America and Buyer and Service Provider hereby irrevocably consent to the jurisdiction of the state and federal courts located in Marion County, Indiana for the resolution of any disputes arising under these Standard Terms and Conditions of Services and the service agreement.

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