



May 26, 2023

**Ashley Louw**

Grant Administrator  
NCPC  
PO Box 651  
Devils Lake, ND 58301

RE: Proposal for a Phase I Environmental Site Assessment and Tier 1 Vapor Encroachment Survey  
City of Leeds Park Vue Apartments  
250 3<sup>rd</sup> Street SW  
Leeds, North Dakota

**Greetings Ms. Louw:**

NorthLand Environmental Consulting LLC (NorthLand) has prepared this proposal to provide a Phase I Environmental Site Assessment (ESA) and Tier 1 Vapor Encroachment Survey (VES) for the City of Leeds Park Vue Apartments property located at 250 3<sup>rd</sup> Street SW in Leeds, Benson County, North Dakota (the Site).

This proposal has been prepared in response to a document titled "Request for Proposal for City of Leeds Park Vue Apartments procurement of an engineer to complete an ASTM Phase I and a Vapor Encroachment Survey (VES)" dated May 17, 2023 (the 2023 RFP).

**Purpose**

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**Phase I ESA**

The ESA will be conducted in accordance with the American Society for Testing and Materials (ASTM) Phase I Environmental Site Assessment Process, Designation E1527-21 (ASTM E1527-21 Phase I Standard) and satisfy the standards and practices set forth in 40 CFR Part 312 – Standards for Conducting All Appropriate Inquiry (AAI Rule) for the purposes of meeting the all appropriate inquiries provisions necessary to qualify for certain landowner liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(35)(B).

In the event that the proposed improvements for the Site, as identified in the 2023 RFP, are to be completed under a federal loan program, NorthLand will complete the Phase I ESA in accordance with the requirements of that program. This proposal does not include any consideration for any other services beyond those explicitly defined by the ASTM E1527-21 Phase I Standard. If desired, NorthLand can provide those services under a separate agreement beyond what is specified in this proposal.

The purpose of the Phase I ESA will be to identify recognized environmental conditions with respect to the Site, and provide information concerning potential "business related environmental risk" related to the Site as defined by the ASTM E1527-21 Phase I Standard and the AAI Rule. If business related environmental risk is identified beyond the scope of

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*250 3<sup>rd</sup> Street SW, Leeds, North Dakota*

*May 26, 2023*

the standard (e.g., the presence of asbestos-containing materials, wetland issues, facility compliance, etc.), a recommendation may be made for additional services.

**Tier 1 VES**

The VES will be conducted in accordance with the ASTM Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions, Designation E2600-15 (ASTM E2600-15 VES Standard), specifically the methods and procedures defined by Section 8 "Tier 1 Screening". The ASTM E2600-15 VES Standard explicitly states that the performance of a VES is not a requirement of and does not constitute, expand, or in any way define "all appropriate inquiry" as defined by the AAI Rule.

The purpose of the Tier 1 VES will be to identify a vapor encroachment condition, which is the presence or likely presence of chemicals of concern vapors in the vadose zone of the Site caused by a release of vapors from contaminated soil and/or groundwater either on or near the Site, as defined by the Tier 1 VES procedures defined by the ASTM E2600-15 VES Standard.

**Scope of Services**

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**Phase I ESA**

NorthLand will complete the following Scope of Services for the Phase I ESA:

**Task 1 – Records Retrieval and Review of Records**

NorthLand will obtain publicly available, practically reviewable and reasonably ascertainable federal, state, county, and city information about the Site and other properties within minimum established ASTM search distances of the Site. NorthLand requests you provide a legal description of the property to be evaluated, a copy of a registered land survey, and/or a plat map with the Site clearly identified as well as all available historical environmental reports for the Site and available title records. NorthLand's scope of services does not include a title search. This scope includes a review of reasonably ascertainable regulatory files such as North Dakota Department of Environmental Quality (NDDEQ) Leak Site data for facilities located on or adjacent to the Site, as identified on the regulatory database report.

**Task 2 – Site Reconnaissance**

NorthLand will coordinate with you to obtain access to the Site with the appropriate Site representative(s). A representative of NorthLand will visually inspect and evaluate the Site. The structures and grounds of the Site will be observed for filling, subsidence, unusual land or surface forms, colorations, odors, indications of any dumping, and evidence of suspect environmental features on the Site such as tanks, drains, drywells, wells, etc. Photographs will be taken to document the overall status and current use of the Site and specific areas of concern. NorthLand will also observe adjacent properties from Site boundaries or public right-of-way.

**Task 3 – Interviews of People with Knowledge of the Site**

NorthLand will interview people with knowledge of the history of the Site and of the surrounding properties. Interviewees will include the Site owner(s) and/or occupant(s), as well as local government officials. NorthLand will provide you and/or the appropriate Site representative, as appropriate, with a User Questionnaire to be completed.



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NorthLand requests that the contact information for any of the above-referenced Site representatives at the time that this proposal is accepted.

Task 4 – Reporting

NorthLand will complete the ESA report by combining the information retrieved through data searches with the observations that are made during the site reconnaissance and interviews.

**Tier 1 VES**

Task 1 – Background Information

NorthLand will obtain background information regarding the proposed future use of the Site, expected groundwater flow direction, details regarding the current and historic uses of the Site and surrounding area, and physical and other noteworthy characteristics of the Site and surrounding area to establish an area of concern. This information will be obtained concurrent to Tasks 1 through 3 of the Phase I ESA discussion above.

Task 2 – Records Retrieval and Review of Records

Concurrent to Task 1 of the Phase I ESA discussion above, NorthLand will obtain publicly available, practically reviewable and reasonably ascertainable federal, state, county, and city information about the Site and other properties within minimum established ASTM search distances of the Site. These records will be evaluated to determine the presence of any existing or historic activities that may be indicative of chemicals of concern that could pose a vapor encroachment condition for the Site.

Task 3 – Evaluation and Reporting

NorthLand will evaluate the Site for the presence of vapor encroachment conditions and complete the Tier 1 VES report by combining the information retrieved through data searches and other information described by the ASTM E2600-15 VES Standard. The Tier 1 VES report will be included as an appendix to the Phase I ESA discussed above.

**Cost and Schedule**

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The fee for the outlined scope of services is a lump sum of **\$3,700** (i.e., \$3,200 for the Phase I ESA and \$500 for the Tier 1 VES), including travel and other incidental costs. NorthLand will provide you with a draft electronic report of both the Phase I ESA and the Tier 1 VES in approximately **six weeks** after receiving the notice to proceed (i.e., acceptance of this proposal, as described below); if a more precise or expedited turnaround time is desired, please inform NorthLand as soon as feasible so any adjustments to this proposal can be made. In addition, during the completion of Phase I ESA, it may be determined that a regulatory file review is necessary, which may cause a delay in the aforementioned schedule; NorthLand will communicate any such delays to you as soon as they are known. Other delays may include the availability of persons familiar with the Site for an interview or the availability of the Site for a site reconnaissance. The reports will be finalized upon your review and approval; the time required to finalize the reports will be dependent on the nature of any comments received. An electronic version of the final reports will be furnished to you. If you would like a hard copy of any of the reports specified in this proposal, they will be provided for you at the cost of the report production (i.e., time and materials).



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Should you choose to retain NorthLand, please provide the specific entities to whom the reports should be issued, and the name(s) of the party(ies) who may rely on the reports (reliance letters requested after the report is made final are \$350.00).

**Items Requested from NCPC**

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The following is a summary of items requested from NCPC to allow for NorthLand to complete the scope of services discussed in this proposal:

- Site contact information, including a representative for the current Site owner and/or current Site occupants.
  - Any previously-prepared environmental reports for the Site.
  - Benson County Parcel ID number and a map that shows the Site boundaries (e.g., plat map, county tax map, survey, Google Earth aerial image).
  - Parties that may rely upon the Phase I ESA and Tier 1 VES.
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To accept this proposal and the General Terms & Conditions that are attached to and made part of this proposal, please respond with an email stating so. If you have any questions, or need clarification of anything presented in this proposal, please do not hesitate to call me at (701) 471-0593.

Sincerely,

**NorthLand Environmental Consulting LLC** Accepted by:



Brandyn Ehlis, PE  
Project Engineer

By \_\_\_\_\_

Position/Title \_\_\_\_\_

Date \_\_\_\_\_

Organization \_\_\_\_\_

Attachments: NorthLand General Terms & Conditions  
Contract Provisions





## GENERAL TERMS AND CONDITIONS

### Article 1 – Our Agreement

**1.1** Our agreement with you consists of these General Terms and Conditions and the accompanying written proposal or authorization (Agreement). This Agreement is our entire Agreement and supersedes all prior agreements. This Agreement may be modified only in a writing signed by us, making specific reference to the provision modified. Directing us to start work prior to execution of this Agreement constitutes your acceptance of this Agreement.

**1.2** The words “you,” “we,” “us,” and “our” include officers, employees, and subcontractors.

**1.3** Any conflicting or additional terms in a purchase order, work order, or other form used to authorize our services are not part of our Agreement unless we specifically accept them in writing. If we cannot agree on mutually acceptable terms, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered.

### Article 2 – Our Responsibilities

**2.1** We will provide the services specifically described in our Agreement. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

**2.2** In performing our services, we will use that degree of care and skill ordinarily exercised by reputable members of our profession practicing under similar circumstances in the same locality at the same time.

**2.3** Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

**2.4** We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing. You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us.

**2.5** Our estimates of construction or remediation costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

**2.6** Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and that site conditions may change over time.

### Article 3 – Your Responsibilities

**3.1** You agree to provide us with all site information and data to which you have access which may affect our services. We will not be responsible for locating buried objects at the site unless we accept that duty in writing.

**3.2** You will provide access to the site. In the course of our work some damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site but we will not be responsible for reasonable or normal damage. We have not included the cost of restoration of such damage in the estimated charges.

**3.3** You agree to provide us with information in your possession or control relating to contamination at the work site.

**3.4** Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials.

**3.5** Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless we accept that duty in writing.

**3.6** You agree to make disclosures required by law. In the event you do not own the site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site.

## GENERAL TERMS AND CONDITIONS

### Article 4 – Reports and Records

**4.1** Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

**4.3** Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you.

**4.4** If you do not pay for our services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

**4.5** Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your property. They may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

**4.6** Electronic data, reports, photographs, samples and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

### Article 5 – Compensation

**5.1** You will pay for services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

**5.2** You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices on receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

**5.3** If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

**5.4** Your obligation to pay for our services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of lawsuit in which we are not involved, your successful completion of a project, receipt of payment from another, or any other event. No retainage will be withheld.

**5.5** You agree to compensate us in accordance with our fee schedule if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

**5.7** If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation

**5.8** In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to fees otherwise due us.

### Article 6 – Disputes, Damage, and Risk Allocation

**6.1** Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute.

**6.2** Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

**6.3** The prevailing party in any action relating to this agreement shall be entitled to recover its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.



## GENERAL TERMS AND CONDITIONS

**6.4** This agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

### **Article 7 – General Indemnification**

**7.1** We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible.

### **Article 8 – Miscellaneous Provisions**

**8.1** We will provide a certificate of insurance to you upon request.

**8.2** You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

**8.3** Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

**8.4** Our Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

**8.5** If a provision of this Agreement is invalid or illegal, all other provisions shall remain in full force and effect.

