



July 2, 2020

**TO:** LOCSD Board of Directors

**FROM:** Ron Munds, General Manager

**SUBJECT: Agenda Item 6J – 7/02/2020 Board Meeting**  
Approval of a Proposal for the Landscape Architectural and Survey Services for the Ferrell Ave. Pathway Project

**President**  
Charles L. Cesena

**Vice President**  
Christine M. Womack

**Directors**  
Matthew D. Fourcroy  
Vicki L. Milledge  
Marshall E. Ochylski

**General Manager**  
Ron Munds

**District Accountant**  
Robert Stilts, CPA

**Unit Chief**  
Scott M. Jalbert

**Battalion Chief**  
Paul Provence

**Mailing Address:**  
P.O. Box 6064  
Los Osos, CA 93412

**Offices:**  
2122 9<sup>th</sup> Street, Suite 110  
Los Osos, CA 93402

**Phone:** 805/528-9370  
**FAX:** 805/528-9377

[www.losososcsd.org](http://www.losososcsd.org)

### **DESCRIPTION**

The Parks and Recreation Advisory Committee has been working on a conceptual plan to construct a pathway between the south end of 7<sup>th</sup> Street and Ferrell Avenue on District owned property. The recommendation in this report is proceed with the design and construction cost estimates for the project and contract with the Wallace Group for landscape architectural and survey services to complete this phase.

### **STAFF RECOMMENDATION**

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

***Motion: I move that the Board approve the proposal from Wallace Group for Landscape Architectural and Survey services for the Ferrell Avenue Pathway Project and authorize the General Manager to enter an agreement for said services not to exceed \$14,400.***

### **DISCUSSION**

The Parks and Recreation Advisory Committee (PRAC) has been working on a conceptual plan for an improved public pathway between the southern end of 7<sup>th</sup> Street and Ferrell Avenue on District owned property. The improved all-weather pathway will follow the existing sand pathway and avoid the sensitive habitat area for the Morro Shoulderband Snail. The District has gained approval from U.S. Fish and Wildlife Service, with conditions, to proceed with the project (approval letter attached). County approvals will also be needed prior to construction.

Per direction from the PRAC, staff solicited the Wallace Group to prepare a proposal for the design of the project. Wallace Group has responded to the request and provided the attached proposal. After conferring with the PRAC Chair, Director Fourcroy, staff is recommending the approval of the proposal and proceeding with this phase of the project.

### **FINANCIAL IMPACT**

The Wallace Group scope of services and cost are summarized in the table below. Staff is requesting that the Board approve the optional task at this time since it is highly likely that surveying services will be needed to establish the

property line on the 7<sup>th</sup> Street side of the District's property and that there may be ADA requirements place on the project which require surveying services as well.

<b>Scope of Services</b>	<b>Cost</b>
Task 1: Project Management & Meetings	\$9,000.00
Task 2: Construction Documents	
Optional Task	
Task 3: Surveying	\$5,400.00
<b>TOTAL</b>	<b>\$14,400.00</b>

There is sufficient fund balance available in the District's general checking account designated for Fund 900 to support this expenditure.

Attachment: Wallace Group Proposal  
USFWS Letter of Approval



## United States Department of the Interior

### U.S. FISH AND WILDLIFE SERVICE

Ecological Services  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003



IN REPLY REFER TO:  
08EVEN00-2020-CPA-0023

March 16, 2020

Dwayne Oberhoff  
Ecological Assets Management  
P.O. Box 6840  
Los Osos, California 93412

**Subject:** Survey Results and Non-Federal No Take Request for Ferrell Street Footpath Improvement Project (074-251-006), Community of Los Osos, County of San Luis Obispo, California

Dear Mr. Oberhoff:

We have completed our review of the Morro shoulderband snail survey report prepared for the subject project area and the request for our agreement with your determination that project activities are not likely to result in take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) (MSS). You submitted the report and request electronically to our office on February 13, 2020. It is our understanding that you are making this request on behalf of the Los Osos Community Services District (LOCSD).

The Ferrell Street Footpath Improvement project area is located in the northern portion of a one-acre parcel owned by the LOCSD, between Ferrell Street and 7th Street within the community of Los Osos. The LOCSD is proposing to improve the existing Ferrell Street dirt footpath with a five- to seven-foot wide asphalt and concrete pedestrian pathway. In addition, along the northern side of the improved footpath, symbolic deterrent fencing will be installed to reduce pedestrian traffic into areas of coastal scrub habitat on site. The site consists of mostly nonnative vegetation mowed regularly for fire hazard abatement, with small isolated patches of remnant coastal scrub habitat adjacent to the project area.

You and Bob Sloan, under the authority of recovery permits TE180579-1 and TE43937B-0, respectively, conducted one survey for MSS on December 6, 2019, that covered the 0.04-acre northern portion of the parcel. Two live and active adult MSS were observed within the remnant coastal scrub habitat present within the survey area. Specifically, one MSS was observed under a coyote brush (*Baccharis pilularis*) and the other under a black sage (*Salvia mellifera*). No empty MSS shells and no other species of snail was observed during the survey efforts.

Dwayne Oberhoff

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Service regulations (50 CFR 17.3) define "harm" to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7, or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

To ensure no adverse impacts to MSS occur from the proposed project and that the project can move forward with a No-take Concurrence Authorization, you propose to implement the following avoidance and protection measures:

1. All project related ground disturbing activities will occur during the dry season (June 1st - October 15th) when MSS are aestivating and unlikely to migrate into work areas.
2. A biologist approved by the Service will conduct a pre-construction survey of the work area no more than 48 hours prior to the initiation of site work. The biologist will notify the Service of the results of the survey immediately following the survey efforts. No live MSS will be relocated during these efforts.
3. Prior to any soil disturbance and/or vegetation removal, silt fencing or orange protective fencing will be installed around the perimeter of the proposed project area to prevent unauthorized ground disturbance outside of the work area.
4. A Service-approved biologist will conduct a pre-construction environmental awareness training session for all construction personnel involved in site disturbance. The training is intended to inform the permittees, construction crews, field supervisors, and equipment operators about the status and presence of the species, grading and construction-activity restrictions, and all proposed avoidance, protection and minimization measures.

To ensure take of MSS would not result from project activities, in addition to the proposed avoidance and protection measures above, the Service-approved biologist will have the authority to stop work if MSS are observed within the project area. If MSS are observed, the Service will be notified.

Based on the LOCSD's commitment to implement the proposed avoidance measures and the additional stop work authorization, we agree that take of MSS is not likely to result from the proposed Ferrell Street Footpath Improvement Project. Any biologist retained to implement the above measures should contact our office for approval at least 72 hours prior to implementation. This letter conveying our agreement is valid only for the subject project and one year from its issuance. It does not authorize species take in any form. If MSS are found on this parcel at any

Dwayne Oberhoff

3

time, or if project construction activities are not complete in one year, please contact the Ventura Fish and Wildlife Office regarding how to proceed.

If you have any questions regarding the contents of this letter, please contact Debora Kirkland of my staff at (805) 677-3321 or [debora\\_kirkland@fws.gov](mailto:debora_kirkland@fws.gov).

Sincerely,



Leilani Takano

Assistant Field Supervisor

cc: Kerry Brown, County of San Luis Obispo  
Ron Munds, Los Osos Community Services District

TRANSMITTAL

---

Date: June 18, 2020

Project Number: PP20-6966-0915

---

To:

Ron Munds  
Los Osos Community Services  
District  
2122 9<sup>th</sup> Street, Suite 110  
Los Osos, California 93402

VIA Email

Phone: 805 528-9370

Fax:

Email: [rmunds@losososcsd.org](mailto:rmunds@losososcsd.org)

---

From:

Bianca E. Koenig  
Director Landscape Architecture  
**WALLACE GROUP**  
612 Clarion Court  
San Luis Obispo, CA 93401

Phone: 805 544-4011

Fax: 805 544-4294

Email: [biancak@wallacegroup.us](mailto:biancak@wallacegroup.us)

---

Subject: Proposal for Ferrell Avenue Footpath

---

Please find attached our proposal for the above referenced project. If this proposal meets with your approval, please sign where indicated and return to our office, **to the attention of Kylie Castle, Marketing Coordinator**, which will serve as our notice-to-proceed on your project.

Please call me if you have any questions at 805 544-4011.

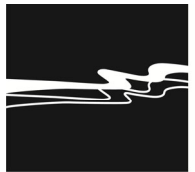
Thank you.

ATTACHMENT

PP20-6966

Exhibit A

Exhibit B



WALLACE GROUP®

CIVIL AND  
TRANSPORTATION  
ENGINEERING

CONSTRUCTION  
MANAGEMENT

LANDSCAPE  
ARCHITECTURE

MECHANICAL  
ENGINEERING

PLANNING

PUBLIC WORKS  
ADMINISTRATION

SURVEYING /  
GIS SOLUTIONS

WATER RESOURCES

WALLACE GROUP  
A California Corporation

612 CLARION CT  
SAN LUIS OBISPO  
CALIFORNIA 93401

T 805 544-4011  
F 805 544-4294

[www.wallacegroup.us](http://www.wallacegroup.us)

June 18<sup>th</sup>, 2020

Ron Munds  
Los Osos Community Services District  
2122 9th Street, Suite 110  
Los Osos, California 93402

Subject: Ferrell Ave Footpath

Dear Mr. Munds:

Wallace Group appreciates the opportunity to provide you with our proposal for Landscape Architectural and Survey services for the above referenced project. Based on our discussion, the following Scope of Services has been prepared for your consideration:

### PROJECT UNDERSTANDING

The Parks & Recreation Advisory Committee in coordination with the Los Osos Community Services District has developed a conceptual plan for an improved public pathway between 7th Street and Ferrell Ave. The desire is for this path to be an all-weather surface, to closely follow the existing trampled pathway, and to avoid the sensitive habitat area for the Morro Shoulderband Snail.

### SCOPE OF SERVICES

#### Task 1: Project Management and Meetings

Wallace Group will provide day-to-day management and task coordination. We also will attend on (1) kick-off meeting with District Staff.

#### Quality Assurance/Quality Control

QA/QC is an important part of our work products. Design submittal deliverables will undergo a Quality Control and Quality Assurance review. This review process is a critical component of a successful project. Wallace Group standards for quality and assurance have been established in order to support project viability and constructability, through detailed review and analysis at critical project milestones. The budgets for QA/QC have been allocated in tasks at specific deliverable milestones.

The duration of this project and therefore this task is estimated to be 2 months based on the Schedule listed after the Scope of Services. Project management hours have been estimated based on this time duration. An extension of the schedule may require a budget increase for this task.

#### Deliverables:

- Kick-off meeting notes
- Monthly Invoices and Project Updates

#### Task 2: Construction Documents

##### 1.1 Construction Plans & Specifications

Based on the initial concept discussed at the kickoff meeting, Wallace Group will prepare Construction Plans for the project using CSD directed design requirements for the path, 'symbolic fencing' (bollards or bollard and rope fencing), and signage. The PS&E package will be submitted at the 35%, 90% and Final Design Stages.



CIVIL AND  
TRANSPORTATION  
ENGINEERING

CONSTRUCTION  
MANAGEMENT

LANDSCAPE  
ARCHITECTURE

MECHANICAL  
ENGINEERING

PLANNING

PUBLIC WORKS  
ADMINISTRATION

SURVEYING /  
GIS SOLUTIONS

WATER RESOURCES

WALLACE GROUP  
A California Corporation

612 CLARION CT  
SAN LUIS OBISPO  
CALIFORNIA 93401

T 805 544-4011  
F 805 544-4294

[www.wallacegroup.us](http://www.wallacegroup.us)



It is estimated that the construction plans may include the following plan sheets:

Wallace Group will prepare a site plan indicating the dimensions and limits of the proposed improvements. A grading plan (maintaining existing drainage patterns) will be prepared showing finished grade elevations on hardscape finish surface features. Construction details will show areas requiring additional detail such as conform locations. Drainage patterns are assumed to be maintained as surface flow into existing features (no drainage pipes). We also assume that no new post-construction stormwater quality improvements will be required. Project specifications will be placed on a sheet in the drawing package. Specifications will be similar to CSI format.

Description	# of sheets
Title Sheet	1
Survey Project Control	1
Site Plan & Notes	1
Grading Plan	1
Construction Details	1
Sheet Specifications	1

Total Estimated Sheets: 6

### 1.2 Probable Construction Cost

Wallace Group will prepare an engineer's opinion of probable construction costs for the improvements. We will perform quantity takeoffs and assign unit prices based on CSD unit cost data, if available, or publicly available bid data for similar scope/size projects.

#### **Deliverables:**

- 35% Plans, Specifications and Estimates for CSD review
- 90% Plans, Specifications and Estimates for CSD review
- Final Design Plans, Specifications and Estimates for BID

#### **Task 3: Topographic and Right of Way Mapping**

Wallace Group will conduct a topographic field survey of the area shown shaded red in Figure 1. The field mapping will locate and show features such as existing fences, power/light poles, edge of pavement, fire hydrants, water valves, utility boxes and vaults, manhole type, rim elevation and inverts, drop inlets, catch basins, approximate pipe sizes and direction of pipe (if any are within survey area), and paint markings which indicate the presence of underground utilities.





We will locate sufficient monument to plot the location of the right of way lines of Ferrell Avenue and 7<sup>th</sup> Street, along with adjoining property lines that are within the limits of survey. Monuments located as part of the field survey will be shown on the base map.

The greater limits and area of the lot will be shown by aerial imagery or aerial mapping provided by the CSD. The topographic survey mapping will be constrained horizontally to the California State Plane Coordinate System of 1983 (CCS83), Zone 5 projection and vertically to the North American Vertical Datum of 1988 (NAVD88), constraining to the same control network that was used as the basis for the aerial mapping used as a basis of the sanitary sewer project.

Wallace Group will compile the ground survey data and the utility identifications to a Civil 3D 2020 drawing. We will create a DTM surface using the ground survey data within the Civil 3D drawing. Local control will be set and shown on the map.

**Deliverables:**

- Signed and sealed 24" X 36" PDF survey base map
- Civil 3D 2020 Survey Base Map

**SCHEDULE**

Wallace Group will provide the above services within 60 days of receiving the Notice to Proceed and a surveyed base map (if provided separate from this contract). If the optional survey task is included in the contract, Wallace Group will provide the above services within 90 days of receiving the Notice to Proceed.



## TO BE PROVIDED BY THE CLIENT

- Coordination with Parks and Recreation Committee
- Underground Service Alert to locate existing underground infrastructure if required
- One single list of approved and consolidated red-lined comments per CSD Review period
- Client shall provide the DIR Project Number for this project. To do so, the Client will need to complete the PWC-100 form and submit to the DIR prior to the commencement of the field survey. This is required to be in compliance with State of California Prevailing Wage laws.

## ITEMS NOT INCLUDED IN SCOPE OF SERVICES

The following services are not included in this Scope of Services or estimate of fees:

- Structural Design / Calculations
- Design of ADA path of travel
- Soils investigation/report
- Drainage analysis
- Design of new drainage or stormwater quality facilities
- Planting or Irrigation Design
- Book Specifications
- Bidding Assistance
- Construction Observation
- Other items not specifically detailed in the scope above

## PROJECT FEES

Wallace Group will perform the services denoted in tasks 1 and 2 of the proposed Scope of Services on a time and materials basis. For budgeting purposes, our preliminary estimate is that over the next 3 months, our fees will be \$8,000 to \$9,000. These services will be invoiced monthly on an accrued basis in accordance with the attached Standard Billing Rates (Exhibit A). Reimbursables will be invoiced as an additional cost and are included in the time and materials estimated fee amount stated above.

The estimated fees denoted in Optional Task 3 will be \$5,400 and are based on prevailing wage rates. If the Client and the California Department of Labor determines that prevailing wage payments are not required, the fees for Optional Task 3 will be adjusted and billed according to the per hour rate of the Standard Wage column on the Standard Billing Rates provided.

At your request, additional services to the Scope of Services will be performed by Wallace Group following the signature of our Contract Amendment or the initiation of a new contract.

## TERMS AND CONDITIONS

In order to convey a clear understanding of the matters related to our mutual responsibilities regarding this proposal, the attached Standard Terms and Conditions (Exhibit B) are considered a part of our proposal agreement. If this proposal meets with your approval, please sign where indicated and return to our office, which will serve as our notice-to-proceed.



We want to thank you for this opportunity to present our proposal for Landscape Architectural and Survey services. If you would like to discuss this proposal in greater detail, please feel free to contact me or Ann Sever.

Sincerely,

**WALLACE GROUP, a California Corporation**

**TERMS AND CONDITIONS ACCEPTED:**

A handwritten signature in black ink, appearing to read "Bianca Koenig".

Bianca E. Koenig, PLA 5081, LEED AP  
Director Landscape Architecture  
612 Clarion Court  
San Luis Obispo  
California 93401  
T 805 544-4011  
F 805 544-4294  
www.wallacegroup.us

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Attachments  
GGM: PP20-6966, 2019, std  
Exhibit A  
Exhibit B

THIS PROPOSAL IS VALID FOR 60 DAYS FROM THE DATE OF THIS DOCUMENT.

Exhibit A  
Standard Billing Rates



Prevailing Wage\*

**Engineering, Design & Support Services:**

Assistant Designer/Technician .....	\$ 90
Designer/Technician I - IV .....	\$ 95 - \$125
Senior Designer I - III .....	\$138 - \$148
GIS Technical Specialist .....	\$135
Senior GIS Technical Specialist .....	\$145
Associate Engineer I - III .....	\$ 115 - \$135
Engineer I - IV .....	\$145 - \$160
Senior Engineer I - III .....	\$170 - \$180
Director .....	\$185
Principal Engineer/Consulting Engineer .....	\$215
Principal .....	\$230

**Landscape Architecture Services:**

Associate Landscape Designer I - II .....	\$ 90 - \$100
Designer I - IV .....	\$110 - \$128
Landscape Architect I - IV .....	\$130 - \$145
Senior Landscape Architect I - III .....	\$147 - \$161
Director .....	\$165

**Support Services:**

Office Assistant .....	\$ 85
Project Assistant I - III .....	\$ 90 - \$100

**Additional Professional Services:**

Fees for expert witness preparation, testimony, court appearances, or depositions will be billed at the rate of \$300 an hour. As authorized in advance by the Client, overtime on a project will be billed at 1.5 times the employee's typical hourly rate.

**Direct Expenses:**

Direct expenses will be invoiced to the client and a handling charge of 15% may be added. Sample direct expenses include, but are not limited to the following:

- travel expenses
- sub-consultant services
- agency fees
- delivery/copy services
- mileage (per IRS rates)
- other direct expenses

**Invoicing and Interest Charges:**

Invoices are submitted monthly on an accrued cost basis in accordance with this Fee Schedule. A finance charge of 1.5% per month may be assessed on all balances that are thirty days past due.

**Right to Revisions:**

Wallace Group reserves the right to revise this Schedule of Fees on an annual basis, personnel classifications may be added as necessary.

**\*Prevailing Wage:**

State established prevailing wage rates may apply to some services and those rates are subject to change.

**Exhibit B**  
**Standard Terms and Conditions**  
**Wallace Group Proposal No. PP20-6966**  
**Contract Agreement Date: June 18, 2020**

**CLIENT:** LOS OSOS COMMUNITY SERVICES DISTRICT  
2122 9<sup>TH</sup> Street, Suite 110, Los Osos, California 93402

**CONSULTANT:** WALLACE GROUP, A CALIFORNIA CORPORATION  
612 Clarion Court, San Luis Obispo, California 93401

CLIENT and CONSULTANT agree that these Standard Terms and Conditions, comprised of pages 1 through 6, and the associated written Scope of Services and budget constitute the entire Agreement between the CLIENT and the CONSULTANT. It supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both the CLIENT and the CONSULTANT.

**ARTICLE 1. GENERAL PROVISIONS**

**1.1 Preamble**

This Agreement is based upon a mutual obligation of good faith and fair dealing between the parties in its performance and enforcement. Accordingly, the CLIENT and the CONSULTANT, with a positive commitment to honesty and integrity, agree to the following:

That each will function within the laws and statutes that apply to its duties and responsibilities; that each will assist in the other's performance; that each will avoid hindering the other's performance; that each will work diligently to fulfill its obligations; and each will cooperate in the common endeavor of the contract.

**1.2 Governing Law and Jurisdiction**

The CLIENT and the CONSULTANT agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of California. It is further agreed that any legal action between the CLIENT and the CONSULTANT arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in San Luis Obispo, California.

**1.3 Precedence of Conditions**

Should any conflict exist between the terms herein and the form of any purchase order or confirmation issued, the Terms and Conditions herein shall prevail in the absence of CONSULTANT'S express written consent of others conditions.

**1.4 Standard of Care**

In providing services under this Agreement, the CONSULTANT will endeavor to perform said services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

**1.5 Corporate Protection**

It is intended by the parties to this Agreement that the CONSULTANT'S services in connection with the Project shall not subject the CONSULTANT'S individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a California corporation, and not against any of the CONSULTANT'S individual employees, officers or directors.

**1.6 Confidentiality**

The CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than the CONSULTANT'S employees, Subconsultants and the general Contractor and Subcontractors, if appropriate, any data or information not previously known to and generated by the CONSULTANT or furnished to the CONSULTANT and marked CONFIDENTIAL by the CLIENT. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the CONSULTANT to defend itself from any legal action or claim.

**1.7 Third-Party Beneficiaries**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other party or entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and CONSULTANT agree to require a similar provision in all contracts with Contractors, Subcontractors, Subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

**1.8 Timeliness of Performance**

The CLIENT and CONSULTANT are aware that many factors outside the CONSULTANT'S control may affect the CONSULTANT'S ability to complete the services to be provided under this Agreement. The CONSULTANT will perform these services with reasonable diligence and expediency consistent with sound professional practices.

### **1.9 Severability**

Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

### **1.10 Survival**

Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

### **1.11 Statutes of Repose and Limitation**

All legal causes of action between the parties to this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run not later than the date of Substantial Completion. If the act or failure to act complained of occurs after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date the CONSULTANT'S services are completed or terminated.

### **1.12 Defects in Service**

The CLIENT shall promptly report to the CONSULTANT any defects or suspected defects in the CONSULTANT'S services of which the CLIENT becomes aware, so that the CONSULTANT may take measures to minimize the consequences of such a defect. The CLIENT further agrees to impose a similar notification requirement on all Contractors in its CLIENT/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the CLIENT and the CLIENT'S Contractors or Subcontractors to notify the CONSULTANT shall relieve the CONSULTANT of the costs or remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

### **1.13 Jobsite Safety**

Neither the professional activities of the CONSULTANT, nor the presence of the CONSULTANT or its employees or Subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, constructions means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with contract documents and any health or safety precautions required by any regulatory agencies. The CONSULTANT and its personnel have no authority to exercise any control over any construction Contractor or its employees in connection with their work or any health or safety programs or procedures. The CLIENT agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the CLIENT'S contract with the General Contractor. The CLIENT also agrees that the CLIENT, the CONSULTANT and the CONSULTANT'S Subconsultants shall be indemnified by the General Contractor and shall be made additional insured under the General Contractor's policies of general liability insurance.

### **1.14 Assignment: Subcontracting**

Neither CLIENT nor CONSULTANT shall assign its interest in this agreement without the written consent of the other. CONSULTANT may not subcontract any portion of the work to be performed hereunder without such consent.

### **1.15 Force Majeure**

Any delay or default in the performance of any obligation of CONSULTANT under this agreement resulting from any cause(s) beyond CONSULTANT'S reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligations of CONSULTANT as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.

### **1.16 Disputes**

(a) Notwithstanding any other provision of this Agreement and except for the provisions of (b) and (c), if a dispute arises regarding CONSULTANT'S fees pursuant to this contract, and if the fee dispute cannot be settled by discussions between CLIENT and CONSULTANT, both the CLIENT and CONSULTANT agree to attempt to settle the fee dispute by mediation through the American Arbitration Association (or other mediation service) before recourse to arbitration. If mediation does not resolve the fee dispute, such dispute shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

(b) Subdivision (a) does not preclude or limit CONSULTANT'S right to elect to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court.

(c) Subdivision (a) does not preclude or limit CONSULTANT'S right to elect to perfect or enforce applicable mechanics lien remedies.

### **1.17 Attorneys' Fees**

In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

### **1.18 Services by CLIENT**

CLIENT shall pay all other charges not specifically covered by the terms of this agreement, unless specifically included in the Scope of Services. The CLIENT shall furnish, at the CLIENT'S expense, all information required by this Agreement. The CONSULTANT may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

### **1.19 Retention**

If any portion of CONSULTANT'S fee is held in retention, such amount shall be released within thirty days after invoicing for completion of corresponding services. Interest shall be paid at the rate of 1.5% per month on any retention amounts not paid within this thirty-day period.

## **ARTICLE 2. DEFINITIONS**

### **2.1 Burdened Labor Costs**

Burdened labor costs shown on the Standard Billing Rates include payroll taxes, worker's compensation insurance, and other overhead costs applicable to the typical standard of care.

### **2.2 Direct Expenses**

Expenditures made by the CONSULTANT, its employees or its Subconsultants in the interest of the Project. Applicable reimbursable direct expenses are defined on the Standard Billing Rates.

## **ARTICLE 3. COMPENSATION**

### **3.1 Payment Due**

Invoices shall be submitted by the CONSULTANT monthly, are due upon presentation and shall be considered past due if not paid in full within thirty (30) days of the invoice date.

### **3.2 Interest**

If payment in full is not received by the CONSULTANT within thirty (30) calendar days of the invoice date, the invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

### **3.3 Collection Costs**

If the CLIENT fails to make payments when due and the CONSULTANT incurs any costs in order to collect overdue sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to the CONSULTANT. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable CONSULTANT staff costs at Standard Billing Rates for the CONSULTANT'S time spent in efforts to collect. This obligation of the CLIENT to pay the CONSULTANT'S collection costs shall survive the term of this Agreement or any earlier termination by either party.

### **3.4 Termination or Suspension of Services**

This agreement may be terminated or suspended by either party effective seven (7) days from the date of written notice, or if the CLIENT suspends the work for three (3) months. Upon receipt of a notice of termination or suspension, CONSULTANT will stop or suspend its work and provide same direction for the work of all its Subcontractors and suppliers. Failure of CLIENT to make payments when due shall be cause for suspension of services or ultimately, termination, unless and until CONSULTANT has been paid in full all amounts due for services, expenses and other approved related charges. CONSULTANT shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension or termination caused by any breach of this Agreement by the CLIENT. Upon payment-in-full by the CLIENT, CONSULTANT shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any reasonable time and expense necessary for the CONSULTANT to resume performance.

### **3.5 Retention Discounts**

Payment of invoices shall not be subject to any discounts or retention by the CLIENT, unless agreed to in writing by the CONSULTANT. Payment to the CONSULTANT for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

### **3.6 Satisfaction with Services**

Payment of any invoice by the CLIENT to the CONSULTANT shall be taken to mean that the CLIENT is satisfied with the CONSULTANT'S services to the date of payment and is not aware of any deficiencies in those services.

### **3.7 Disputed Invoices**

If the CLIENT objects to any portion of any invoice, the CLIENT shall so notify the CONSULTANT in writing within ten (10) days of receipt of the invoice. The CLIENT shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within thirty (30) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within forty-five (45) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the CLIENT on

all disputed invoice amounts that are subsequently resolved in the CONSULTANT'S favor and shall be calculated on the unpaid balance from the invoice date.

### **3.8 Payments to the CONSULTANT**

Payments to the CONSULTANT shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the CLIENT of offsetting reimbursement or credit from other parties who may have caused additional services or expenses. No withholdings, deductions or offsets shall be made from the CONSULTANT'S compensation for any reason unless the CONSULTANT has been found to be legally liable for such amounts.

### **3.9 Advance Payment: Withholding Work Product**

CONSULTANT reserves the right to require payment in advance for work estimated to be done during a given billing period. CONSULTANT, without any liability to CLIENT, reserves the right to withhold any services and work products herein contemplated pending payment of CLIENT'S outstanding indebtedness or advance payment as required by CONSULTANT. Where work is performed on a reimbursable basis, budget may be increased by amendment to complete the Scope of Services. CONSULTANT is not obligated to provide services in excess of the authorized budget.

## **ARTICLE 4. SERVICES, ADDITIONAL SERVICES, AND AMENDMENTS**

### **4.1 Definitions**

Services and work products not expressly included with those specified in this agreement, as determined by CONSULTANT, are not covered by this agreement. Such services and work products will be provided only upon compliance with the procedures set forth in Article 4.5 of this Agreement.

### **4.2 Services During Construction**

Any construction inspection or testing provided by CONSULTANT is for the purpose of determining the Contractor's compliance with the functional provisions of the project specifications only. CONSULTANT in no way guarantees or insures Contractor's work nor assumes responsibility for methods or appliances used by the Contractor for job site safety or for Contractor's compliance with laws and regulations. CLIENT agrees that in accordance with generally accepted construction practices the construction Contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project including safety of all persons and property and that this responsibility shall be continuous and not be limited to normal working hours.

### **4.3 Soil Testing**

CONSULTANT makes no representations concerning soil conditions, and is not responsible for any liability that may arise out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing. It is the CLIENT'S responsibility to obtain a soils report upon which report CONSULTANT can rely.

### **4.4 Opinion of Probable Construction Costs**

In providing opinions of probable construction cost, the CLIENT understands that the CONSULTANT has no control over cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the CONSULTANT'S opinions of probable construction costs are made on the basis of the CONSULTANT'S professional judgment and experience. CONSULTANT makes no warranty, express or implied, that bids or negotiated cost of the Work will not vary from the CONSULTANT'S opinion of probable construction cost.

### **4.5 Additional Services**

Additional services or work products requiring an adjustment of CONSULTANT'S original estimated budget or fixed fee will be provided at CLIENT'S request upon execution of a written amendment to this agreement expressly referring to the same and signed by both parties.

## **ARTICLE 5. TERMINATION OF AGREEMENT**

### **5.1 Due to Default**

This agreement may be terminated by either party upon seven (7) days written notice should the other party fail to substantially perform in accordance with this agreement through no fault of the party initiating the termination.

### **5.2 Without Cause**

This agreement may be terminated by CLIENT upon at least fourteen (14) days written notice to CONSULTANT in the event that the project is abandoned.

### **5.3 Termination Adjustment: Payment**

If this agreement is terminated through no fault of the CONSULTANT, CONSULTANT shall be paid for services performed and costs incurred to the termination notice date, including reimbursable expenses due, plus an additional amount not to exceed ten percent (10%) of charges incurred to the termination notice date to cover services to orderly close the work and prepare project files and documentation, plus any additional direct expenses incurred by CONSULTANT including but limited to cancellation fees or charges. CONSULTANT will use reasonable efforts to minimize such additional charges.

## **ARTICLE 6. LIMITATION OF LIABILITY: WAIVER: WARRANTY**



### **6.1 Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the CLIENT and the CONSULTANT, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the CONSULTANT to the CLIENT for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the CONSULTANT to the CLIENT shall not exceed \$50,000.00, or the CONSULTANT'S total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

### **6.2 Contractor and Subcontractor Claims**

The CLIENT further agrees, to the fullest extent permitted by law, to limit the liability of the CONSULTANT and the CONSULTANT'S officers, directors, partners, employees and Subconsultants to all construction Contractors and Subcontractors on the Project for any and all claims, losses, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the CONSULTANT and the CONSULTANT'S Subconsultants to all those named shall not exceed \$50,000.00, or the CONSULTANT'S total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

### **6.3 Warranty**

CONSULTANT makes no warranty, either express or implied, as to CONSULTANT'S findings, recommendations, specifications, or professional advice, except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance.

If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the CONSULTANT are revealed, to the extent that they affect the Scope of Services, compensation, schedule, allocation of risks or other material terms of this Agreement, the CONSULTANT may call for renegotiation of appropriate portions of this Agreement. The CONSULTANT shall notify the CLIENT of the changed conditions necessitating renegotiation, and the CONSULTANT and the CLIENT shall promptly and in good faith enter into renegotiations of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination Provision hereof.

If the Scope of Services pursuant to this agreement does not include on-site construction review, construction management, or other construction supervision for this project, or if subsequent to this agreement CLIENT retains other persons or entities to provide such services, CLIENT acknowledges that such services will be performed by others and CLIENT will defend, indemnify and hold CONSULTANT harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities except claims caused by the sole negligence or willful misconduct of CONSULTANT; and from any and all claims arising from or resulting from clarifications, adjustments, modifications, discrepancies or other changes necessary to reflect changed field or other conditions, except claims caused by the sole negligence or willful misconduct of CONSULTANT.

### **6.4 Interpretation**

Limitations on liability, waivers and indemnities in this Agreement are business understandings between the parties and shall apply to all legal theories of recovery, including breach of contract or warranty, breach of fiduciary responsibility, tort (including negligence), strict or statutory liability, or any other cause of action, provided that these limitations on liability, waivers and indemnities will not apply to any losses or damages that may be found by a trier of fact to have been caused by the CONSULTANT'S sole or gross negligence or the CONSULTANT'S willful misconduct. The parties also agree that the CLIENT will not seek damages in excess of the contractually agreed-upon limitations directly or indirectly through suites against other parties who may join the CONSULTANT as a third-party defendant. "Parties" means the CLIENT and the CONSULTANT, and their officers, directors, partners, employees, Subcontractors and Subconsultants.

### **6.5 Delays**

The CLIENT agrees that the CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond the CONSULTANT'S control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by the CLIENT of the CLIENT'S Contractors or CONSULTANT'S; or discovery of any hazardous substances or differing site conditions.

## **ARTICLE 7. HAZARDOUS WASTE MATERIALS**

### **7.1 Liability**

CONSULTANT hereby states and CLIENT hereby acknowledges that CONSULTANT has no professional liability insurance for claims arising out of the performance of or failure to perform professional services, including, but not limited to the preparation of reports, designs, drawings and specifications, related to the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing substances including, but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site. Accordingly,

the CLIENT hereby agrees to bring no claim for negligence, breach of contract indemnity or otherwise against the CONSULTANT, its principals, employees, and agents if such claim, in any way, would involve the CONSULTANT'S services for the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or hazardous waste materials. CLIENT further agrees to defend, indemnify and hold harmless CONSULTANT, its officers, directors, principals, employees and agents from any asbestos and/or hazardous waste material related claims that may be brought by third parties as a result of the services provided by the CONSULTANT pursuant to this agreement except claims caused by the sole negligence or willful misconduct of the CONSULTANT.

## **ARTICLE 8. OWNERSHIP AND REUSE OF DOCUMENTS**

### **8.1 CONSULTANT Ownership**

All original papers, documents, drawings, electronic media and other work product of CONSULTANT, and copies thereof, produced by CONSULTANT pursuant to this agreement shall remain the property of CONSULTANT and may be used by CONSULTANT without the consent of CLIENT. Upon request and payment of the costs involved, CLIENT is entitled to a copy of all papers, documents and drawings provided CLIENT'S account is paid current.

### **8.2 Document Reuse**

In the event the CLIENT, the CLIENT'S Contractors or Subcontractors, or anyone for whom the CLIENT is legally liable makes or permits to be made any changes to any reports, plans specifications or other construction documents prepared by the CONSULTANT without obtaining the CONSULTANT'S prior written consent, the CLIENT shall assume full responsibility for the results of such changes. Therefore the CLIENT agrees to waive any claim against the CONSULTANT and to release the CONSULTANT from any liability arising directly or indirectly from such changes. In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising from such changes. In addition, the CLIENT agrees to include in any contracts for construction appropriate language that prohibits the Contractor or any Subcontractors of any tier from making any changes or modifications to the CONSULTANT'S construction documents without the prior written approval of the CONSULTANT and further requires the Contractor to indemnify both the CONSULTANT and the CLIENT from any liability or cost arising from such changes made without proper authorization.

### **8.3 Electronic Media Alteration and Reuse**

Because CADD information stored in electronic form can be modified by other parties, intentionally or otherwise, without notice or indication of said modifications, CONSULTANT reserves the right to remove all indicia of its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by CONSULTANT in CADD form only for information and use by CLIENT for the specific purpose for which CONSULTANT was engaged. Said materials shall not be used by CLIENT, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended by CONSULTANT without CONSULTANT'S express written permission. Unauthorized modification or reuse of the materials shall be at CLIENT'S sole risk, and CLIENT agrees to defend, indemnify, and hold CONSULTANT harmless, from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the unauthorized modification or use of these materials.