

November 27, 2017

City of Green  
Engineering Department  
Paul Pickett, City Engineer  
1755 Town Park Boulevard  
Green, Ohio 44685

Re:       Project:       Multi-use Path (PID 99729)  
          Site:         Raber Road, City of Green, Ohio  
          BL Project No.: 17C6240

Dear Mr. Pickett:

We are pleased to submit this Agreement to perform professional Services in connection with the above referenced Project.

BL Companies, Inc. d/b/a BL Companies Professional Services directly or through one or more affiliated companies, which together are doing business as “**BL Companies**,” and are referred to collectively below as the “**Consultant**” will perform professional Services for the City of Green referred to below as the “**Client**”.

## **I. PROJECT UNDERSTANDING**

This Agreement is based on Consultant’s understanding that the nature of the Project is the design of a multi-use trail along Raber Road from Troon Drive to Mayfair Road and referred to below as the “**Site**”.

The Professional Services to be provided are more specifically described in the Scope of Services below. Consultant’s Services generally will consist of land surveying, engineering, and environmental services to develop Stage 2 and Stage 3 development plans and the necessary Ohio Department of Transportation (ODOT) environmental clearance process.

## **II. CLIENT RESPONSIBILITIES**

Client is responsible for providing the following information or other items to Consultant. Delays in providing, or omissions in, such information or items will likely result in Additional Services. Consultant may use such information in performing its Services and is entitled to rely upon the accuracy and completeness thereof. Unless specifically stated in the Scope of Services set forth below, Consultant will not independently verify such information and is not liable for

any errors or omissions. The information and other items to be provided by Client, or other consultants acting on behalf of Client, are:

- Providing Consultant with lawful access to the Site.
- Any existing drawings, documents, design data or CAD files related to Raber Road or the adjoining streets.
- Access over or around watercourses and wetlands.
- Any documents, including certifications, which Consultant is requested to sign shall be provided to Consultant at least seven days before the execution deadline.
- Any coordination with ODOT, District 4 pertaining to any previously collected environmental data or documentation.
- Any coordination pertaining to public involvement for this project.

### **III. SCOPE OF SERVICES**

#### **A. Basic Services**

Consultant will perform the following phases of Basic Services in relation to the Site:

1. Land Surveying
2. Civil Engineering
3. Environmental Services

The specific tasks Consultant will perform as part of the Basic Services in relation to the Site are as follows:

#### **1. Survey**

**1.1 Field Data** – The Consultant will prepare a topographic survey of the off-Site roadway areas required for design and preparation of the multi-use path construction documents. The area of the Site survey extends from the intersection of Troon Drive to the intersection of Mayfair Road and is a total of 4,000 LF along Raber Road extending laterally to the existing rights-of-way. Topographic and planimetric features will be determined from field ground survey. Within the Site survey area, right-of-way limits along both sides of the roadways will be depicted and established from record mapping. Underground utilities will be compiled and plotted from evidence of visible surface locations and available record drawings only. Cross sections will be provided at 50-foot intervals.

**1.2 Right-of-Way Plans** – The Consultant will develop right-of-way plans following the requirements set forth in the current ODOT Location and Design manuals.

#### **2. Environmental Clearance**

**2.1. Categorical Exclusion, Level 1 (CE1)** – Based on the scope of services at this time, prior to design services, this project would be characterized as a CE1, in which purpose and need, resource avoidance and minimization as well as mapping for the project are entered into EnviroNet.

- 2.2. **Categorical Exclusion, Level 2 (CE2)** – With completion of the multiuse trail design, there is the possibility for additional temporary and/or permanent right-of-way to complete the project, ODOT, District 4 would then scope the project for a CE2. If CE2 is required within the project study area, the environmental task would include a Level 1 Ecological Survey. This task would include a review of threatened and endangered species with the United States Fish and Wildlife (USFWS) and Ohio Department of Natural Resources (ODNR) and review of Section 4(f)/6(f). As part of the documentation needed for the CE2, the Consultant would complete a regulated materials review and evaluate underserved populations. If required the Consultant will complete the CE2 tasks, documentation, and data entry into EnviroNet, as an additional service.
- 2.3. If required, the Consultant will assist the City of Green with public involvement. Additionally, Consultant will submit a scoping request for Section 106 and a Permit Determination Request (PDR), if needed. It is not anticipated that a Section 404 Permit will be required; however, the Consultant can complete the permit application and provide the necessary documentation for a submittal to the United States Army Corps of Engineers (USACE), if required. Furthermore, it is not expected that additional studies will be warranted for Section 106. The aforementioned can be provided as an Additional Service if required.

### 3. Civil Engineering

3.1. **Stage 2 Plans** – The Consultant will perform the following tasks under this phase:

- **Stage 2 Design Plans** – The Consultant will prepare Stage 2 Design plans in accordance with ODOT, and City of Green design standards. These plans will include a cover sheet, miscellaneous details, drainage plans, profiles, cross-sections, and restoration plans.
- **Review of Drainage Analysis and Report** – The Consultant will perform a review of the existing and proposed drainage analysis, including hydrology and hydraulic calculations. The Consultant will prepare a report in accordance with the ODOT's Drainage Manual and City of Green Standards.
- **Quantity and Engineer Opinion of Cost Estimates** – The Consultant will prepare preliminary design quantity estimate of construction items, and apply unit costs to all quantities and prepare cost estimates on appropriate forms to develop an Opinion of Probable Cost Estimate.
- **Project Stakeholder and Public Informational Meetings** – If required, the Consultant will attend one (1) project stakeholder meetings with the Client and project stakeholders. The Consultant will also attend one (1) public informational meeting during the design phase to solicit public comment and input.
- **Coordination Meetings** – The Consultant will attend three (3) coordination meetings with the Client.

- **Roadway Plan and Profile Drawings** – Consultant shall prepare plan and profile drawings at 1"=30' horizontal 1"=5' vertical depicting multi-use path geometry, pavement, grading, and detailed sanitary sewer and water profile and schematic electric, telecommunications and gas layout.
- **Cross-sections** – Consultant shall prepare cross-section drawings along the pathway center line depicting existing and proposed ground profile along the proposed pathway center line with vertical geometry.

3.2. **Stage 3 Plans** – The Consultant shall perform the following tasks under this phase:

- **Incorporate Stage 2 Design Comments** – The Consultant will incorporate all data, documents, and comments received from the Client's and ODOT District 4's review of the Consultant's Stage 2 Design submission. Consultant will prepare a response to comments letter and will submit such letter with Stage Design.
- **Stage 3 Design and Construction Documents** – The Consultant will assemble and submit the required final plans, specifications, estimates, calculations, reports, Front End/Boiler Plate Contract and supporting documentation associated with the required Construction Documents for the project as described in the ODOT L&D manual.
- **Coordination Meeting** – The Consultant will attend three (3) coordination meetings with the Client.

#### 4. **Additional Miscellaneous Services**

As additional services are identified, the scope and fee for the particular task will be prepared and provided to the Client for review and approval.

#### **B. Exclusions and Additional Services**

The Scope and Fee for Basic Services are based on information provided by Client. If Project parameters or field conditions vary significantly or if unforeseen circumstances arise, such changes will likely result in Additional Services and may affect construction costs and other Project costs.

The Services being provided within the Fee for Basic Services are only those which are expressly set forth in this Agreement. All other Services are Additional Services. Additional Services will be provided only if authorized by Client. Authorization may be made by any reasonable means including fax or email.

Except as may be described in the Basic Services set forth above, Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Site.

The Client will provide for temporary and or permanent acquisition of right-of-way if needed, the Consultant shall have no responsibility for right-of-way acquisition either permanent or temporary.

Consultant can provide any or all of the following Additional Services which is not an exhaustive list. Any Additional Services not listed below may be provided by others. Additional Services provided by Consultant will be paid on an hourly basis invoiced at the Consultant's Hourly Billing Rates in effect when the Services are performed.

1. In addition to the specific items identified as Additional Services under individual work phases, Consultant can provide additional types of Services including:

- a. Survey Services including property surveys, aerial mapping, easement maps, subdivisions, boundary monumentation and construction layout.
- b. Environmental Services including (i) Phase I and Phase II Environmental Site Assessments, (ii) Hazardous Building Materials Inspection (HBMI), and (iii) investigation of vapor intrusion and supervising the design and implementation of remediation or mitigation strategies including vapor barrier and/or ventilation systems.
- c. Geotechnical investigation, analysis and recommendations.
- d. Subsurface utility engineering (SUE) to locate underground utilities.
- e. Concept plans.
- f. Traffic studies and analysis.
- g. Off-site improvement design.
- h. Regulatory analysis and permitting strategies including zoning, wetlands and other state and federal requirements.
- i. Architecture and building design.
- j. Structural engineering.
- k. Mechanical, electrical, plumbing and fire safety engineering.
- l. Design and specification of voice and data cabling systems, infrastructure and equipment.
- m. Landscape architecture.
- n. Bid phase Services.
- o. Construction cost estimating.
- p. Construction administration.
- q. Construction inspection.
- r. Assistance with LEED, Green Globe or similar energy or environmental certifications.
- s. Commissioning.
- t. Geographic Information Systems (GIS) analysis.
- u. Natural Resource services including NEPA compliance, wetland assessment and mitigation, stream assessment and restoration, terrestrial and aquatic ecological assessment, forest studies and forest conservation, watershed conservation and planning and conservation grants.

2. Redesign or excessive revisions required by Client or public agencies. The Fee specified is based on reasonable and customary revisions required by public agencies. Redesign or excessive revisions will constitute Additional Services.

3. Any services in support of litigation, an administrative action or arbitration relating to the Project or the Site and any additional design or permitting activities resulting from the final resolution of such litigation, administrative action or arbitration.
4. Modifications to Consultant's work required by changes in applicable federal, state and local law, including statutes, ordinances and regulations.
5. Preparation, attendance and presentation at meetings and public hearings other than those specified as part of Basic Services.
6. Services necessary to respond to the recommendations of any value engineering exercise including modifications to any reports, drawings, specifications, bidding or other documents.
7. Unless otherwise specified, the Scope and Fee is based on the understanding that the Project delivery method is Design – Bid – Build. Change to a different Project delivery method will likely result in Additional Services.
8. Services necessary to prepare multiple bid packages for phased construction or other reasons.
9. Services necessary to address issues which arise if the Client elects to bid the Project based on documents other than complete and final construction documents.
10. Consultant's Scope of Services under this Agreement does not include Project observation or review of the Contractor's performance or any other construction administration Services, and that such Services will be provided for by the Client, or result in Additional Services.
11. Review, revision and execution of certifications required by Client or Client's lender. Consultant will not certify to matters that are beyond the scope of services provided by Consultant. Additionally, Consultant can only certify as to visible surface features as shown on the construction documents. Review and revision of lenders' form documents to conform them to Consultant's scope and to reflect actual project considerations is an Additional Service.

#### **IV. SCHEDULE**

Consultant will work with the Client to develop a schedule that is mutually agreeable to both parties.

#### **V. FEES AND EXPENSES**

##### **A. Fees For Basic Services**

The Fee specified is based on Consultant providing all of the Services included in Basic Services. If the Client requests Consultant to perform some, but not all, of the Services included in Basic Services, then the Fee for individual phases may increase. The revised Fee will be negotiated separately.

The Fee specified is based on Consultant performing the Basic Services in a logical and efficient sequence. If Client directs a different sequence of Services, such revised sequence will likely require Additional Services and may impact the Schedule of the Project including regulatory review and approvals. Consultant shall not be responsible for any increased costs or delay in the Project resulting from Client's decision to alter the sequence.

The breakdown of the Total Fee among the phases as set forth below is a good faith estimate. The cost of particular phases of Services may exceed the estimate below, but Consultant will not incur Fees beyond the total for items within the Total Fee without Client authorization.

<b>Basic Services Phase</b>	<b>Services / Description</b>	<b>Fee Type</b>	<b>Fee (\$)</b>
	<b>Design and Permitting Services</b>		
<b>1.1</b>	Survey w/ Topo	Hourly Estimated	\$9,200
<b>1.2</b>	Right-of-Way Plans	Hourly Estimated	\$1,500
<b>2.1</b>	Environmental Clearance	Hourly Estimated	\$ 3,300
<b>3.1</b>	Stage 2 Plans	Hourly Estimated	\$20,000
<b>3.2</b>	Stage 3 Plans	Hourly Estimated	\$15,000
<b>4.0</b>	Misc. Additional Services	Hourly	TBD
	Total Hourly Estimated Fee (excluding Hourly)	<b>Total Fee</b>	<b>\$49,000</b>

**Hourly Estimated Fee.** Consultant will provide the Basic Services identified as “Hourly Estimated” on an Hourly basis at its Hourly Billing Rates in effect when the Basic Services are performed and Client will pay for the time actually spent. The Hourly Estimated Fee has been provided at the Client's request for tasks as to which: (a) the scope is not fully defined and, therefore, no Total Fee can be provided or (b) the extent of Consultant's effort that will be required to perform the scope is unknown at this time. Accordingly, the Hourly Estimated Fee is a good faith estimate based on the information currently available about the Project, the Scope of Service and the level of effort. Consultant cannot and does not guarantee that the Basic Services can be completed within the Hourly Estimated Fee. Fees for each phase will be billed monthly on the basis of time spent. *Consultant will not incur Fees above the Hourly Estimated Fee without authorization or approval by the Client.*

**Unit Rates.** Consultant will provide the Basic Services identified as “Unit Rate” for the Unit Rate set forth regardless of the time spent. Fees for each such phase will be billed monthly on the basis of the number of units performed each month.

## **B. Fees for Additional Services**

All Additional Services will be paid in addition to the Total Fee. Unless otherwise agreed, such Additional Services will be paid on the basis of actual time spent using the Hourly Billing Rates in effect when the Services are performed.

## **C. Reimbursable Expenses**

### **1. Expenses included as overhead:**

Routine copies and printing, first class postage, routine local and long distance telephone service and facsimile transmission and receipt will be provided without charge.

### **2. Expenses reimbursable to Consultant:**

All other out-of-pocket expenses including subconsultants, subcontractors, materials, equipment rentals, mileage, travel expenses, additional insurance requirements imposed by the Client, multi-set or large volume copying and printing, binding, overnight delivery service, deed and map copies and application Fees and related expenses required for agency or Client submissions are Reimbursable Expenses. Client will pay Reimbursable Expenses to Consultant at cost plus fifteen percent (15%) for administration and overhead.

## **D. Hourly Billing Rates**

Consultant will utilize the following Hourly Billing Rates, which include fringe, burden and overhead:

### **Hourly Billing Rates January 1, 2017**

#### **Classification:**

Senior Principal

#### **Hourly Rate:**

\$225-\$275

#### **ENGINEERING & LANDSCAPE ARCHITECTURE**

Principal Engineer	\$175-\$225
Principal Landscape Architect	175-200
Senior Project Manager	175-225
Project Manager	125-175
Senior Engineer	115-180
Project Engineer	90-125
Staff Engineer	70-95
Senior Landscape Architect	120-160
Project Landscape Architect	90-120
Staff Landscape Architect	70-90



Principal Construction Inspector	125-175
Senior Construction Inspector	100-125
Construction Inspector	70-100
Senior GIS Specialist	100-125
GIS Specialist	80-100
GIS Technician	60-80
Senior CADD Designer	80-115
CADD Designer	60-85
Technician	45-65
Administrative Assistant	45-75

### **SURVEY & SUBSURFACE UTILITY ENGINEERING**

Principal Land Surveyor	\$150-\$175
Senior Project Manager	130-160
Project Manager	100-150
Survey Technician	85-110
Subsurface Utility Specialist	85-110
Crew Chief	85-125
Transit Person	65-85
Rod Person/Technician	45-65
Administrative Assistant	45-75

### **ENVIRONMENTAL**

Principal Environmental Scientist	\$155-\$225
Senior Project Manager	150-225
Project Manager	120-175
Senior Environmental Scientist	110-150
Senior Project Scientist	95-120
Project Scientist	70-95
Staff Scientist	65-85
Environmental Quality Control Coordinator	95-120
Senior GIS Specialist	100-125
GIS Specialist	80-100
GIS Technician	65-80
Field Technician	55-75
Technical Assistant	40-65
Administrative Assistant	45-75

#### **E. Fee Protection**

The Fee shall remain in effect for Services provided within six months of the date this Agreement was issued.

The Hourly Billing Rates shall remain in effect for work done during the calendar year. Consultant adjusts its Hourly Billing Rates annually on January 1.

#### **F. Billing**

Consultant will bill Client by issuing invoices as of the end of each month beginning with the commencement of work and continuing through Project completion. Each monthly invoice will be for all Fees earned (whether for Basic Services or Additional Services) and Reimbursable Expenses incurred by Consultant during the month. Sales and Use Tax, if any, imposed on the Client will be added to the bill. Client agrees that all invoices are due on receipt. Client's payment of the invoice will acknowledge that Client is satisfied with Consultant's services and knows of no defect or deficiency in Consultant's services at the time of payment. If Client objects to all or any portion of the invoice, Client will notify Consultant within ten (10) business days from the date of receipt of the invoice and shall make timely payment of the undisputed portion of the invoice. The parties will immediately confer to resolve the disputed portion of the invoice.

Consultant reserves the right to charge interest at 1.5% per month on the unpaid balance of any invoice beginning on the 31st day after the date of the invoice. Consultant also reserves the right to suspend or terminate Services on all of Client's Projects if any balance remains unpaid for more than 30 days after the date of the invoice. If Client is or has been delinquent in its payments, Consultant reserves the right to require payment prior to the commencement of additional work. Consultant shall not be liable to Client for any costs or damages or any impact on Project Schedule that may result from Consultant's suspension of services due to Client's nonpayment. If Consultant resumes services after all invoices have been paid, the schedule and compensation may be equitably adjusted to reflect any delays or additional costs caused by such suspension of services. Continuation of service is not a waiver of Consultant's right to collect all sums due and is not a waiver of Consultant's right to suspend or terminate Services at a later time. The suspension or termination of Services shall be without further obligation or liability from Consultant to the Client but shall not relieve the Client of the obligation to pay for Services performed by Consultant through the date of termination. Consultant reserves the right to withhold any deliverables until Client has paid in full. If Consultant engages an attorney or collection agency to collect any unpaid balances, the Client shall be responsible for all costs, expenses, attorney fees for outside and in-house counsel and collection fees incurred by Consultant in the collection of any unpaid balances.

## **VI. TERMS & CONDITIONS**

This Agreement is subject to the attached Consultant Contract Provisions, which are incorporated into this Agreement in their entirety.

## **VII. CLOSING STATEMENT**

If this Agreement along with the attached Consultant Contract Provisions are agreeable, please indicate your acceptance by signing on the attached acceptance form, and by returning two (2) executed originals along. A faxed signature or an electronic signature shall be binding to the same extent as an original. Any changes to this Agreement must be initialed by both parties to be binding.

After we receive the executed originals from you, and any required retainer, we will execute both to make it a binding Agreement and return one (1) fully executed original to you.

We look forward to participating in the successful realization of this Project.

Very truly yours,

## **BL COMPANIES**

By: \_\_\_\_\_  
James Jones, PE, CPESC  
Project Manager

[Execution signatures on following page]

ACCEPTED AND AGREED

**CLIENT**  
**City of Green**

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

**CONSULTANT**  
**BL Companies, Inc. d/b/a BL Companies Professional Services**

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Please send executed Agreement to:  
BL Companies, Inc.  
3755 Boettler Oaks Drive, Suite G  
Green, Ohio, 44685  
(234) 294-6345  
Attention: James Jones, PE, Project Manager  
[jjones@blcompanies.com](mailto:jjones@blcompanies.com)

## CONSULTANT CONTRACT PROVISIONS

1. **CONTRACT** – This Agreement constitutes the full and complete agreement between the parties and may be changed, amended, added to, superseded or waived only if both parties specifically agree in writing to such amendment of the Agreement. This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. In the event of any inconsistency between this Agreement and any proposal, contract, purchase order, requisition, notice to proceed or like document, this Agreement shall govern.
2. **RIGHT OF ENTRY** – When entry to property is required for the Consultant to perform its Services, the Client agrees to obtain legal right-of-entry on the property.
3. **DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations and other documents, including those in electronic form, prepared by Consultant are instruments of Consultant's service that shall remain Consultant's property. The Client agrees not to use Consultant-generated documents for marketing purposes, for purposes other than the purpose for which the documents were prepared by Consultant, or for future modifications, without Consultant's express written permission.

Any reuse or distribution to third parties without such express written permission or specific adaptation by Consultant will be at the Client's sole risk and without liability to Consultant or its employees, subsidiaries, independent professional associates, subconsultants and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Consultant from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.

4. **CONSTRUCTION PHASE SERVICES** – If Consultant performs any Services during the construction phase of the Project, Consultant shall not supervise, direct, or have control over contractor's work. Consultant shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the contractor. Consultant does not guarantee the performance of the construction contract by the contractor and does not assume responsibility for the contractor's failure to furnish and perform its work in accordance with the contract documents.
5. **STANDARD OF CARE** – Consultant and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services. Client agrees that Services provided will be rendered without any warranty, express or implied. The Client recognizes that the professional standard of care does not require that the Consultant's instruments of service be perfect and that some change orders may be required even by instruments of service that meet the professional standard of care. Accordingly, and in recognition of the possibility of unforeseen circumstances occurring during the life of the Project, the Client agrees that the Project budget for design and construction will include a contingency which is reasonable in light of the stage of the Project and the information available at the time the budget is

established. Consultant will not be liable for increased construction costs that are within a reasonable contingency.

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.

In the event a change is required because the Consultant breached the standard of care, then: (1) the Consultant shall be responsible for revising its instruments of service at no cost to the Client; (2) if a required item or component of the project is omitted from the construction documents or if a change order is otherwise required, Consultant shall be responsible for paying the incremental cost of adding or correcting that item or component, excluding the reasonable cost that would have been incurred by the Client at the time of the original bid for such Project item or component to the extent such item or component would have been required and included in the original construction documents; (3) in no event will the Consultant be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

Consultant shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

6. **OPINION OF PROBABLE COSTS** – When required as part of its work, Consultant will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by Consultant hereunder will be made on the basis of Consultant's experience and qualifications and will represent Consultant's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that Consultant does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
7. **SUSPENSION OF WORK** – The Client may, at any time, by written notice, suspend further work by Consultant. The Client shall remain liable for, and shall promptly pay Consultant for all Services rendered to the date of suspension of Services. Continuation of the Services at a later date may result in additional fees.
8. **TERMINATION** – This Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, Client will pay Consultant for all Services rendered and Reimbursable Expenses incurred under this Agreement to the date of termination.
9. **INSURANCE** – Consultant will maintain Worker's Compensation insurance meeting statutory requirements and will maintain general liability, automobile liability, and professional liability coverage of at least one million dollars (\$1,000,000.00) during the time Consultant is providing Services to Client.

No one other than Client and Consultant are an intended beneficiary of this Agreement.

**10. AGREED REMEDY.** 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, to the maximum extent permitted by law, Client agrees to limit the total liability, in the aggregate, of Consultant and Consultant's officers, directors, employees, agents and subconsultants for any and all of the Client's or anyone claiming by, through or under the Client's damages, injuries, claims, losses, or expenses whatsoever arising out of or in any way related to Consultant's Services, the Project or this Agreement, to the sum of two hundred fifty thousand dollars (\$250,000.00) or the Consultant's total Fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

**11. CHANGES OR DELAYS** –The Fees described in Section V constitute Consultant's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if Consultant's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of Consultant. Temporary work stoppages caused by any of the above may result in additional costs. When such delays beyond the Consultant's reasonable control occur, the Client agrees that the Consultant shall not be responsible for damages, nor shall the Consultant be deemed in default of this Agreement.

## **12. MISCELLANEOUS**

**Governing Law and Dispute Resolution:** The laws of the state of Connecticut shall govern the validity and interpretation of this Agreement.

The Client and Consultant agree to submit all claims and disputes arising out of Consultant's performance under this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

Client and Consultant mutually consent and submit to the jurisdiction of the federal and state courts for the State of Connecticut and agree that any action, suit or proceeding arising out of this Agreement may be brought in the federal or state courts for the State of Connecticut. The parties mutually acknowledge and agree that they will not raise, in connection with any such suit, action or proceeding, any defense or

objection based upon lack of personal jurisdiction, improper venue or inconvenience of forum.

**Invalid Terms:** In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

**Reliance:** Consultant shall be entitled to rely on the accuracy and completeness of any and all information provided by the Client, Client's consultants and contractors and information from public records without the need for independent verification.

**Assignment:** Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party.

**Certifications:** Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guaranty, or warrant the existence of conditions that Consultant cannot ascertain.

**Third Parties:** 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 Consultant. Consultant's Services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Consultant because of this Agreement or Consultant's performance of Services hereunder.

**Consequential Damages:** Neither the Client nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

**Project Information:** Consultant shall have the right to include photographic or artistic representations and a description of the project among Consultant's promotional and professional materials, print and electronic. Consultant shall be given reasonable access to the completed Project to take photographs or make such representations.

**Authorization:** Client agrees that the individual signing this Agreement is duly authorized to fully bind the Client, its successors and assigns.