

Salisbury Pathways Committee

Ninety Third Meeting

Special Meeting

Date and Time: Monday, September 16, 2024, at 5:30 p.m.

Location: **Hybrid meeting**

Present: Chris Williams, Gerry Stanton, Kathy Trahan, Natalia Smirnova, Pat Hackett – in person.

Minutes:

Call to order – 5:30 p.m.

1. Approval of the minutes of the meeting on August 12, 2024.
Vote – yes = 4, abstain = 1.
Minutes approved.

2. **TRIP application:**
 - Curtis received the proposal for design and permitting of the sidewalk projects on Main Street and Undermountain Road from Haley Ward, Inc. There will be challenges due to conflicting DOT and ADA issues as well as topography, especially on the Main St section up the hill.

 - Meanwhile, the Town can fund the preliminary work as outlined in the summary page #01-E and F (\$4,600 and \$800). This will start the design process.

The proposal for design and permitting of the sidewalk projects on Main Street and Undermountain Road from Haley Ward, Inc. is attached.

3. **DEEP Recreational Trails Grant application:**
 - Gerry suggested to create a Thank You letter for all supporters and explain our next steps.
 - Natalia is to email DEEP and ask about the process going forward, our score and rank. Ask how we can better our application for the next funding cycle.

The meeting was adjourned at 5:35 p.m.

Minutes respectfully submitted by Natalia V. Smirnova, Secretary, on September 25, 2024.



HALEY WARD
ENGINEERING | ENVIRONMENTAL | SURVEYING

September 17, 2024

Mr. Curtis Rand – First Selectman
Town of Salisbury
P.O. Box 548
Salisbury, CT 06068
Email: crand@salisburyct.us

Re: Proposal for Final Design and Permitting of Sidewalks on Main Street (State Route 44) and Undermountain Road (State Route 41) in Salisbury, CT

Dear Mr. Rand:

Haley Ward, Inc. (Consultant) is pleased to provide this proposal for final design and permitting services for Phase 1 (Main Street) and Phase 2 (Undermountain Road) sidewalks. On the following pages we provide a proposed scope of services, fee, schedule, list of Town-supplied items, and a list of services that are not included in this proposal.

Per our recent discussion, we will assemble the design and permit documents for Phases 1 and 2 into one set of plans, specifications, and estimate. By separate agreement or change order, we can separate the two phases in the future if necessary.

Please review this proposal carefully and call me if you have any questions. You may engage our firm for this work by completing and signing the authorization block on Page 9 and returning one signed copy to me (digital copy is acceptable).

SCOPE OF SERVICES

Task 1 – Initial Services

- A. Review a CT DOT document entitled "*Transportation Rural Improvement Grant Program (TRIP) Project Administration Guidelines*". Determine requirements applicable to the subject project.
- B. Retain the services of a qualified wetland scientist to:
 - 1) Delineate state and federal wetlands within the project limits.
 - 2) Prepare a wetland delineation report that is suitable for use as a technical attachment in local, State, and Federal wetland permitting.

C. Rand | 09.17.24 | 4010219.002 | Page 1





- 3) Evaluate the project limits for invasive plants.
 - 4) Prepare an invasive species control plan for use in State and Federal permitting.
- C. Coordinate additional survey needs with the Town and Town's land surveyor.
- 1) Locate wetland flags in Phase 1.
 - 2) As-built topographic survey of recently completed sidewalk improvements in vicinity of the Main Street / Brook Street intersection.
 - 3) Class T-2 topographic survey of the proposed sidewalk route on property of Sarum Village.
- D. Photograph current conditions, including the recently constructed sidewalk near the fire house.
- E. Identify items in the Route 41 and Route 44 rights-of-way that may conflict with the design or interfere with CT DOT's normal operation of the right-of-way.
- F. Review Preliminary Design Plans for Phases 1 and 2 to identify areas where a five-foot separation between the edge of pavement and sidewalk cannot be achieved within the State rights-of-way (a CT DOT requirement).
- G. Reconcile ADA features of the Phase 1 and 2 designs with requirements outlined in a document entitled "*Guidelines for Pedestrian Facilities in the Public Right of Way*" (PROWAG). Identify areas where compliance is infeasible.
- H. Confer with the CT DOT's ADA Coordinator to review potentially infeasible design requirements and to discuss a path forward toward approval of the Town's "ADA Technical Infeasibility Forms" for the project.
- I. Contact Call Before You Dig to obtain any available mapping that relates to subsurface utilities within the project limits.
- J. Contact the Town's sewer authority to seek record drawings of sanitary sewers within the project limits.
- K. Meet with the Town to:
- 1) Review ADA project requirements and potential conflicts.
 - 2) Review impacts that would result from moving the horizontal alignment to provide at least five feet of separation between a sidewalk and the edge of state-highway pavement.
 - 3) Coordinate the location of Phase 2 sidewalk placement within the Sarum Village development.



Task 2 – Final Design Plans, Specifications, and Estimate

- A. Update the existing plan and profile drawings to include additional survey mapping, utility data, and wetland delineations.
- B. Prepare final design plans for Phases 1 and 2. The plan set will include:
 - 1) Cover sheet.
 - 2) General information sheet, including general notes, list of drawings, legend, wetland-impact table, permit approval letters, and/or notices with conditions.
 - 3) Plan and profile drawings that show horizontal and vertical alignment of the sidewalks, construction limits, proposed grading, and stormwater system layout where required.
 - 4) Cross sections at 50-foot intervals and at critical locations such as driveway curb cuts or areas where unusual grading conditions occur.
 - 5) Typical details, including:
 - a) Sidewalk cross section
 - b) Driveway ramp construction
 - c) ADA-accessible ramps (various configurations)
 - d) Handrails and fencing (where necessary)
 - e) Storm sewer improvements
 - f) Drainage headwall
 - g) Underdrains
 - h) Pavement striping / crosswalks
 - i) Permanent signage
 - 6) Soil erosion and sediment control plans, details, and narratives.
 - 7) Maintenance and protection of traffic plans and construction-sign details.
- C. Prepare drainage calculations and report in support of the proposed culvert extension at Station 36+45 on Main Street. The drainage calculations will be prepared using the methodology stipulated in the CT DOT Drainage Manual.
- D. Develop a final construction-cost opinion using CT DOT methodology and estimating protocols. The estimating process will include the following steps:
 - 1) Identify construction items (Consultant will use standard CT DOT items to the extent practicable).
 - 2) Estimate the quantity for each construction item.
 - 3) Research market-value unit prices for each construction item based on the CT DOT English Bid Item List, various Connecticut DAS state bid contracts, and recent bids received by the Town for sidewalk construction.
 - 4) Assemble the estimate, incorporating allowances for minor items, inflation to the probable date of bid, and operating contingency.



- E. Prepare a technical specification for each construction item. The specifications will rely primarily on CT DOT Standard Specifications for Roads, Bridges, Facilities, and Incidental Construction – Form 819.
- F. Review the final design plans, specifications, estimate, and anticipated rights-of-way requirements with the Town.
- G. Revise the plans, specifications, and estimate in response to Town comments. Issue the design plans, specifications, and estimate to Town in PDF. Hard copies will be provided upon request.

Task 3 – Public Information Meeting

- A. Prepare colored renditions of project plans for the Town's public information meeting.
- B. Present the design and answer technical questions during the Town's public information meeting.
- C. Prepare a memorandum to summarize public comments and questions and the responses provided during the Public Information Meeting.

Task 4 – Draft Bid Documents

- A. Bid documents:
 - 1) Review the CT DOT TRIP Project Administration Guidelines to confirm the list of documents that must be incorporated into the bid documents, including CHRO requirements, State Required Contract Provisions, and Connecticut Prevailing Wage Rates.
 - 2) Confer with Town regarding bidding protocols and requirements for contract time, liquidated damages, performance and payment bonds, and required contractor insurance limits.
 - 3) Prepare DRAFT front-end bid documents using the 2018 Engineers Joint Contract Documents Committee (EJCDC) format. Critical dates, contractor information, and prevailing wage-rate decision will be left blank; however, the draft submission will include all required CHRO and State-Required Contract Provisions.
 - 4) Provide the draft bid documents to Town in PDF.

Task 5 – Permits:

- A. CT DOT Encroachment Permit Coordination:
 - 1) Prepare CT DOT "ADA Technical Infeasibility Forms" as necessary to document any non-compliant accessibility elements of the design.
 - 2) Review "ADA Technical Infeasibility Forms" with the CT DOT's ADA Coordinator. Work with the Coordinator to reconcile any disagreements regarding the infeasibility determinations.
 - 3) Revise the design to address final determinations of the CT DOT ADA Coordinator.



- 4) Submit final design plans and drainage report to CT DOT District 4 – Special Services Section for review.
 - 5) Meet with CT DOT personnel as necessary to review the plans and resolve CT DOT review comments.
 - 6) Revise the final design plans, drainage calculations, specifications, and estimate as necessary to address the CT DOT District 4 review comments. Prepare a summary letter to explain how the revised plans address the CT DOT review comments. Submit the summary letter and revised plans to CT DOT District 4.
 - 7) Prepare a bond estimate for use by the CT DOT.
 - 8) Seek an approval letter from CT DOT District 4 Special Services Section, stating that the project plans are acceptable for issuance of an encroachment permit.
- B. Salisbury Inland Wetlands and Watercourses Commission (IWWC)
- 1) Coordinate the application process with the Town's Land-use staff.
 - 2) Prepare the IWWC application for approval of regulated activities.
 - 3) Submit the application and plans to the IWWC for approval.
 - 4) Fulfill public notice requirements if a public hearing is required.
 - 5) Attend one site visit with the IWWC if required.
 - 6) Represent the Town (as Applicant) at up to two meetings of the Town's IWWC (one of these meetings may be a public hearing).
 - 7) Revise the project plans and specifications as necessary to address any review comments offered by the Town's land-use staff and/or third-party reviewer and to incorporate any conditions of approval imposed by the IWWC.
- C. Salisbury Planning and Zoning Commission (PZC) (CGS 8-24 Referral)
- 1) Coordinate the Section 8-24 referral process with the Town and Town's land-use staff.
 - 2) Submit copies of the project design plans as may be requested by the PZC.
 - 3) Attend one meeting of the PZC to present the project plans and answer technical questions relating to the design.
- D. U.S. Army Corps of Engineers – Connecticut General Permits (GP-2)
- Note: Consultant assumes that wetland impacts and associated water quality impacts resulting from the subject project may be authorized by the U.S. Army Corps of Engineers and Connecticut Department of Energy and Environmental Protection under the Connecticut General Permits – General Permit 2 (Self Verification Category). State and Federal permitting under the Pre-Construction Notification or Individual Permit categories will be considered as additional services.*
- 1) Review the General Conditions of the General Permit with Consultant's wetland scientist to confirm that the project meets the Conditions.



- 2) Prepare the U.S. Army Corps of Engineers Self-Verification Notification Form for signature by Client.
- 3) Submit the signed Self-Verification Notification Form to the U.S. Army Corps of Engineers along with the following attachments:
 - a) Official Species List (Federal)
 - b) Documentation of Tribal Historic Preservation Officer and State Historic Preservation Office notifications
 - c) Site Location Map
 - d) Project Plans
 - e) Copy of State Approvals

Task 6 – Rights-of-Way Acquisition

- A. Identify the location, type, and dimensions of rights, easements, or partial takings required to complete construction. Prepare a table of recommended acquisitions for inclusion on the project plans.
- B. Prepare preliminary rights-of-way maps for the Town to use in negotiations with affected property owners.
- C. Once the location, type, and dimensions of acquisitions are established, coordinate final rights-of-way map preparation with the Town's Land Surveyor.

Task 7 – TRIP Grant Final Submission Package

- A. Consultant will assemble a final TRIP Grant submission package to CT DOT. The submission will include the following items:
 - 1) Final design plans
 - 2) Technical specifications
 - 3) Draft contract documents
 - 4) Final construction cost estimate
 - 5) Approval letter from CT DOT District 4 Special Services Section stating that the plans are acceptable for issuance of an encroachment permit
 - 6) Final Design Submission Documentation Form (to be prepared by Consultant with assistance by Town)
 - 7) General Municipal Certification for Design Activities Form (to be prepared by Consultant with assistance by Town)

COMPENSATION

Consultant will undertake the above Scope of Service for the **lump sum fee of \$118,500**. This fee includes labor, report preparation, and reimbursable expenses. Costs for this project will be invoiced monthly, based upon the work completed during the invoice period. The following table provides an itemized schedule of values for the work:



<u>Task</u>	<u>Lump Sum Fee</u>
Task 1 – Initial Services	\$ 16,600
Task 2 –Final Design (Plans, Specifications, & Estimate)	\$ 60,400
Task 3 – Public Information Meeting	\$ 2,500
Task 4 – Draft Bid Documents	\$ 5,800
Task 5 – Permits	\$ 25,900
Task 6 – Rights-of-Way Assistance	\$ 4,800
Task 7 – TRIP Grant Final Submission Package	<u>\$ 2,500</u>
Total:	\$ 118,500

IMPLEMENTATION

Consultant will begin work immediately upon receipt of a signed agreement and will render services according to the following approximate schedule:

Task	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7
1. Initial Services	■						
2. Final Design (PS&E)		■	■	■			
3. Public Information Meeting			■				
4. Draft Bid Documents				■			
5. Permits				■	■	■	■
6. Rights-of-Way Assistance				■	■	■	
7. TRIP - Final Submission Package							■

TOWN-SUPPLIED ITEMS

The Town shall be responsible for the following items:

1. Provide Consultant with:
 - a) Updated survey data in AutoCAD compatible format (to be prepared by Town's land surveyor)
 - b) Sanitary sewer mapping (if available)
 - c) Typical insurance coverage requirements, liquidated damages, and bond requirements for construction contracts.
2. Facilitate discussions with the owners of Sarum Village regarding the location of a proposed sidewalk on their property.
3. Retain a professional arborist to generate recommendations for the protection, pruning, or removal of specimen trees near construction work.
4. Coordinate and advertise for a public information meeting.



5. Pay directly for any permit application fees, legal notices, and third-party review fees.
6. Coordinate and administer CGS 8-24 requirements with the PZC.
7. Retain the project surveyor to develop rights-of-way maps as necessary for the project.
8. Obtain all necessary rights and easements to construct work on private properties. If rights-of-way are donated, Town shall also procure a State-required "Waiver of Compensation and Appraisal" for each such donation.
9. Submit documentation to CT DOT to confirm that rights-of-way have been acquired in accordance with a document entitled "*State Funded Municipal Projects Requirements for Rights of Way Acquisitions*"

ADDITIONAL SERVICES

The following services are specifically excluded from the scope of services of this proposal and will be considered as additional services if they become necessary:

1. Geotechnical analyses
2. Analysis of existing drainage facilities, except as specifically included in the Scope of Services.
3. Landscape design
4. Lighting design and associated electrical circuitry
5. Structural design of retaining walls or bridges
6. Individual State or Federal wetland and/or floodplain authorizations

AUTHORIZATION

If this proposal is acceptable to you, please sign the approval block and return a signed copy for our files. Haley Ward, Inc. is prepared to initiate work on this project upon receipt of a signed copy of this proposal. Out- of-scope services will not be performed without your prior written approval. Furthermore, your authorization will signify your acceptance of the attached Terms and Conditions.

If you have any questions concerning this proposal or if additional services are needed, please contact me at 860-325-2574 or dbattista@haleyward.com. We appreciate the opportunity to be of service to the Town of Salisbury.

Sincerely,
Haley Ward, Inc.

David N. Battista, P.E.
Vice President / Senior Project Manager

Enclosure: Professional Services Terms and Conditions



Acceptance and Authorization to Proceed on behalf of the Town of Salisbury:

Signature: _____ Billing Address: _____

Printed Name: _____ City/State/ZIP: _____

Date: _____ Email: _____

Phone: _____ Fax: _____



Haley Ward, Inc.
Professional Services Terms and Conditions

1. General

These Professional Services Terms and Conditions, together with the attached proposal and Schedule of Charges, collectively constitute the "Agreement" as that term is used herein between Haley Ward, Inc. ("Consultant") and the entity or person to whom the proposal is addressed ("Client") to perform basic Services. The Schedule of Charges may be omitted for Lump Sum type Agreements.

2. Services

The Consultant agrees to perform the services ("Services") for Client described in the proposal to which these Professional Services Terms and Conditions are attached. Consultant will initiate the Services after receipt of Client's approved and accepted Proposal(s). All Proposals (written or otherwise) are acknowledged to be incorporated into and made a part of the Agreement. It is understood and agreed by the parties that certain conditions or emergencies may arise in which it is to the mutual benefit of the parties that the Consultant initiate Services not identified in the Agreement but which are based upon verbal authorization provided by Client. In such cases, Consultant agrees to commence such verbally authorized Services and Client agrees to compensate Consultant accordingly. All Services verbally authorized by Client in this manner will be governed by the terms of the Agreement. Responding to, or complying with, subpoenas, depositions, testimony, or document retrieval related to the Services will be considered "litigation response" and shall be part of the Services provided

that such litigation is unrelated to Consultant's indemnity hereunder.

3. Additional Services

All Services that are not specifically included in, or reasonably inferred to be included in, the Services will be considered Additional Services. Upon request of Client or discovery by Consultant of changed, or latent, or previously undisclosed conditions affecting the cost and/or scope of the Services, Consultant will prepare a written proposal for such Additional Services which, upon written acceptance of Client, will be considered a change order ("Change Order") under this Agreement. All Additional Services verbally authorized by Client will be governed by the terms of this Agreement.

4. Compensation for Services

Client agrees to compensate Consultant in accordance with the Proposal which may be on a Lump Sum or Standard Hourly Rates basis depending upon the nature of the Services and the information reasonably available to Consultant at the time the Proposal is prepared. The total compensation for Services is based on the respective project tasks. The Consultant may alter the distribution of compensation between individual tasks of the work to be consistent with Services actually rendered but shall not exceed the total estimated compensation amount unless approved in writing by the Client. The total estimated compensation for Consultant's Services included in the breakdown of task incorporates all labor, overhead, profit, reimbursable expenses, and Consultant's subconsultants' charges. Reimbursable expenses include but are not limited to the



following project-related items: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishing and utilities; courier charges; reproduction charges, reproduction of reports, drawings, specifications, bidding-related or other procurement documents, Construction Contract Documents, specialized equipment/software, and similar project-related items; and subconsultants' charges. Reimbursable expenses will be the project-related internal expenses actually incurred or allocated by the Consultant, plus all invoiced external reimbursable expenses allocable to the project, the latter multiplied by a factor of 1.15. The external reimbursable expenses and Consultant's subconsultant factors include Consultant's overhead and profit associated with Consultant's responsibility for the administration of such Services and costs.

It is understood, however, that circumstances or conditions may arise during the performance of the Services that affect the project price which could not have reasonably been expected or foreseen despite the exercise of due care. As such, the "not-to-exceed" price in other than a Lump Sum Proposal is not intended to be a firm price. Consultant will notify Client in the event the Consultant anticipates the actual project cost will exceed its time and materials estimate. Thereafter the parties shall enter into a mutually acceptable Change Order. For verbally authorized Services or litigation response Services as described above, Client agrees to compensate Consultant at its then current rates for similar Services. Consultant will not raise its rates for any project in-progress prior to notice.

5. Schedules, Budgets, and Estimates or Opinions of Cost

Any schedules or completion dates, budgets, or estimates of cost prepared by Consultant represent Consultant's professional judgment based on its experience and available information. Amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Consultant. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Consultant that the total compensation amount thus estimated will be exceeded, Consultant shall give Client written notice, allowing Client to consider its options, including suspension or termination of Consultant's Services for Client's convenience. Upon notice, Client and Consultant promptly shall review the matter of Services remaining to be performed and compensation for such Services. Client shall either exercise its right to suspend or terminate Consultant's Services for Client's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining Services to be rendered by Consultant, so that total compensation for such Services will not exceed said estimated amount when such Services are completed. If Client decides not to suspend Consultant's Services during the negotiations and Consultant exceeds the estimated amount before Client and Consultant have agreed to an increase in the compensation due Consultant or a reduction in the remaining Services, then Consultant shall be paid for all Services rendered hereunder. To the extent necessary to verify Consultant's charges and upon Client's timely request,



Consultant shall make copies of such records available to Client at cost.

Since neither Consultant nor Client has control over the cost of labor, materials, or equipment, or contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets, or estimates of cost prepared by Consultant or proposed, established, or approved by Client. A retainer in the amount defined in the proposal of Services is required prior to initiating the scope of Services. The retainer amount will be credited to the final invoice.

6. Invoices and Payment Terms

Invoices will be submitted monthly. Invoices shall be prepared in accordance with Consultant's standard invoicing practices and are due and payable within 30 days of receipt.

For Standard Hourly Rates Method of Payment, the amounts billed for Consultant's Services will be based on the cumulative hours charged to the project during the billing period by each class of Consultant's employees times the negotiated hourly rates for each applicable billing class, plus reimbursable expenses and Consultant's subconsultants' charges. The Standard Hourly Rates and reimbursable expense Schedule will be adjusted annually (as of December 1st) to reflect annual charges in the compensation payable to Consultant.

For Lump Sum Method of Payment, the portion of the Lump Sum amount billed for Services will be based upon Consultant's estimate of the percentage of the total

Services actually completed during the billing period. If any reimbursable expenses are expressly allowed, Consultant may also bill for any such reimbursable expenses incurred during the billing period. The compensation amount is conditioned on a period of service not exceeding twelve months. If such period of service is extended, the compensation amount for Consultant's Services shall be appropriately adjusted.

To facilitate prompt payment to lower-tier subcontractors or vendors, Consultant may submit invoices to Client on an interim basis for such outside expenses exceeding \$1,000. Payment in full is due upon receipt of Consultant's invoice. If client objects to all or any portion of the invoice, Client will notify Consultant within five (5) business days from the date of receipt of invoice and shall promptly pay the undisputed portion of the invoice. The parties will immediately make every effort to settle the disputed portion of the invoice.

If Client fails to make any payment due Consultant for Services and expenses within 30 days after receipt of Consultant's invoice, then: amounts due Consultant will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and Consultant may, after giving seven days written notice to Client, suspend Services until Client has paid in full all amounts due for service, expenses, and other related charges. Client waives any and all claims against Consultant for any such suspension. Payment will be credited first to any interest owned to Consultant and then to principal. Interest at the rate of one and one-half (1.5) percent per month will be applied to the outstanding balance for accounts not paid within thirty (30)



calendar days from the billing date. Invoices in other than Consultant's standard format or supported documentation for any invoice will be provided at Client's written request. In the event the Consultant must engage counsel to attempt to recover overdue payments, Client will reimburse Consultant for all reasonable attorney's fees and court costs.

7. Suspension and Termination of Contract

Client may terminate this Agreement with seven (7) days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven (7) days prior written notice to Client. 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 related charges.

8. Term

This Agreement will terminate upon completion of the Services. Notwithstanding the foregoing, Client or Consultant may terminate this Agreement in accordance with the section of this Agreement entitled Suspension and Termination of Services. Client's obligation to compensate Consultant for any litigation response services shall survive termination of the Agreement as described in this paragraph.

9. Standard of Care

The standard of care for all professional Services performed or furnished by Consultant under this Agreement will be the care and skill used by members of Consultant's profession practicing under

similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's Services.

10. Construction Phase Services

If this Agreement provides for any construction phase Services by Consultant, it is understood that the Contractor (the entity hired by the Client to perform the construction), not Consultant, is responsible for the construction of the project, and that Consultant is not responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor.

11. Indemnification

To the fullest extent permitted by law, Client and Consultant each agree to indemnify the other party and the other party's officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees, and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of Services under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

12. Insurance



Consultant shall obtain and maintain a policy of professional liability insurance (with prior acts coverage sufficient to cover the Services performed under this Agreement) with policy limits in the amount of not less than \$3,000,000 each occurrence / \$3,000,000 aggregate. Such insurance will be renewed so as to provide continuous coverage during the term of this Agreement and for a period of at least twelve (12) months following the completion of Consultant's professional Services under the Agreement. Coverage shall not be canceled or reduced in limits by endorsement until at least 30 days prior written notice is given to Client or cancelled for nonpayment of premium until at least 10 days prior written notice is given to Client.

Consultant shall also obtain and maintain the following insurance policies and minimum limits: a) Workers' Compensation Insurance - Statutory; b) Commercial General Liability insurance - \$1,000,000 each occurrence / \$2,000,000 aggregate; and c) Automobile Liability - \$1,000,000 combined single limit. Consultant will promptly notify Client if, during the terms of this Agreement, insurance of these types and limits become commercially unavailable to Consultant's industry at a reasonable price through consideration fault of Consultant. In such circumstances, the parties will endeavor to negotiate a mutually acceptable resolution in good faith.

13. Limitation of Liability

To the fullest extent permitted by law, Client agrees that the total liability, in the aggregate, of Consultant and Consultant's officers, directors, members, partners, agents, employees, and subconsultants, to the Client, its subsidiary

and/or affiliated companies and their respective officers, directors, employees, agents and anyone claiming by, through, or under Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of, resulting from or in any way relating to Consultants' Services, this Agreement or any Addenda, from any cause or causes, shall be limited to \$50,000 or the total amount of compensation received by Consultant, whichever is greater.

14. Confidentiality

Consultant shall maintain the confidentiality of the project information including but not limited to the nature of the project, the location of any sites under consideration or selected sites, together with any other information supplied to Consultant by Client and designated by Client to be confidential or proprietary, except (1) when such confidential information becomes generally known to the public through no fault of Consultant or (2) when disclosure is required pursuant to applicable governmental regulations or by order of a court of competent jurisdiction.

15. Intellectual Property/Ownership of Documents

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional Services, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional Services for the purpose of constructing, occupying, and maintaining the project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk and Client agrees to indemnify and hold Consultant harmless from all claims,



damages, and expenses, including attorney's fees, arising out of such reuse by Client or by others acting through Client.

16. Use of Electronic Media

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

17. Record Retention

Consultant will maintain a copy of all final Reports for a period of five years after the date of completion of Services. Upon completion of the project, Consultant will forward such records to Client at the expiration of this retention period, the cost of which Client agrees to bear. If no such written request is received, Consultant shall be entitled to dispose of these records.

18. Force Majeure

Consultant shall not be deemed in default of this Agreement to the extent that any delay or failure in the performance of Consultant's obligation results from any cause beyond its reasonable control and without its negligence.

19. Dispute Resolution

Client and Consultant agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them, arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective as of the date of this Agreement. Consultant's ability to pursue payment as described in paragraph 6. is not subject to this paragraph.

20. No Third-Party Beneficiaries

Nothing contained in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Consultant to any other individual or entity. Consultant's Services under this Agreement are for the sole use and benefit of Client and may not be used or relied upon by any other individual or entity without the express written approval of Client and Consultant.

21. Assignment

Neither Consultant nor Client may delegate, assign, sublet or transfer its duties or interest in the Agreement without written consent of the other party.

22. Subcontracts

Consultant may engage suitably trained and skilled persons or firms, including, without limitation, any affiliate of Consultant, to perform any part of the Services. Nothing herein, however, will relieve Consultant from its duties and obligations as set forth herein.

23. Notices

All notices authorized or required between the Client and the Consultant, or required by any of the provisions herein, shall be given in writing and shall be sent by certified mail, return receipt requested, postage prepaid, and address to the



intended party. Notices sent in this manner shall be deemed given seven business days after mailed. Notices may also be given by personal delivery, sent via a nationally recognized overnight carrier, or sent by facsimile, and shall be deemed given when delivered (if by personal delivery or overnight courier) or when faxed.

24. Precedence

These Professional Services Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed or like document.

25. Severability

If any of the provisions of this Agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform the Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

26. Legal Action

All legal actions by either party against the other for any cause or causes, including, but not limited to, breach of the Agreement, negligence, misrepresentations, breach of warranty or failure to perform in accordance with the standard of care, - In the event that Client institutes a suit against Consultant, and if such suit is not successfully prosecuted, or if it is dismissed, or if a verdict is rendered in favor of Consultant, Client agrees to pay Consultant any and all costs of defense, including attorneys' fees, expert witnesses' fees, and court costs and any and all other

expenses of defense which may be reasonably necessary, immediately following dismissal of the case or immediately upon judgment being rendered in favor of Consultant.

27. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Maine.

28. Public Responsibility

Client acknowledges that Client or the site owner, as the case may be, is now and shall remain in control of the site for all purposes at all times. Except as required by law or regulation, Consultant will not report to any federal state, county or local public agencies having jurisdiction over the subject matter, any conditions existing at the site that may present a danger to public health, safety, or the environment. Client agrees to notify each federal, state, county, and local public agency, as they each may require, of the existence of any condition at the site that may present a potential danger to public health, safety, or the environment.

29. Survival

Paragraphs (limitation of liability, the indemnification, dispute resolution, and the scope of Services) shall survive the completion of the Services under this Agreement and the termination of this Agreement for any cause.

30. Right of Entry

Client grants Consultant, and, if the project site is not owned by Client, warrants that permission has been granted for, a right of entry from time to time by Consultant, its employees, agents, and subcontractors, upon the project site for the purpose of providing Services. While Consultant will take all reasonable precautions to



minimize damage to any property entered upon in pursuit of project functions, it is understood by Client that in the normal course of the work some damage may occur, the correction of which is not part of this Agreement. If Consultant is required to restore the land to its former condition, this will be accomplished and the cost will be added to Consultant's fee.

31. Safety

Consultant will perform its Services in a safe manner and use reasonable care to comply with all State and Federal OSHA regulations, Consultant's Health & Safety Plan which may be developed in connection with the Services, or other written safety rules or regulations provided to Consultant by Client. Consultant's safety responsibilities, however, are limited solely to the activities of Consultant, its employees, and subcontractors. Neither

the professional activities nor the presence of Consultant or its employees or subcontractors will be deemed to control the operations of any others.

32. Entire Agreement

These Professional Services Terms and Conditions, Proposals and any addenda thereto (the "Agreement") constitute the entire agreement between Client and Consultant and supersede all prior or contemporaneous communications, representation, or agreements, whether oral or written, with respect to the subject matter, and has been induced by no representations, statements, or agreements other than those herein expressed. This Agreement may be executed on one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.