



220 South Street, Suite 201  
West Lafayette, IN 47906  
317.423.9600

February 17, 2016

Ms. Bev Shaw  
222 North Chauncey Avenue  
West Lafayette, IN 47906

RE: Professional Landscape Architectural Services – Sagamore Parkway Tree Planting

Dear Bev,

We're excited to provide you with a scope and fee proposal for landscape architectural services related to the Sagamore Parkway Tree Planting Project. We understand that this work is to provide a conceptual design exhibit to be submitted to INDOT for new street trees along Sagamore Parkway in West Lafayette, IN. A detailed list of tasks and associated fees is outlined below.

Attached is our proposed Scope of Basic Services for this project. In the event that we have misunderstood any Project Information or the requested Scope of Basic Services, we are happy to revise this outline as necessary.

#### **1.0 Project Information**

The proposal herein is an agreement between the City of West Lafayette ("Client") and MKSK ("Landscape Architect") and is based on the initial project information set forth below. The Client and Landscape Architect agree as follows.

- 1.1 Project Description: This project will provide a conceptual design exhibit of street tree removal and proposed locations of new street trees for Sagamore Parkway in West Lafayette, IN.
- 1.2 Project Location & Boundaries: The project site is within the INDOT right-of-way on the north side of Sagamore Parkway from Yeager Road to Soldier's Home Road and on the south side of Sagamore Parkway from CaRx to Nighthawk Drive.
- 1.3 Project Budget: TBD
- 1.4 Project Schedule: TBD
- 1.5 Project Responsibilities: Consultant, contracted directly to Client. See attached Exhibit B.

## **2.0 Project Team**

The Landscape Architect will complete the work from the MKSK West Lafayette office location. The project team will include Eric Lucas as Principal-In-Charge, Evan Smith as the Project Manager and others as necessary.

## **3.0 Scope of Basic Services**

**3.1 Concept Design Phase Services** – The Landscape Architect shall prepare a hand-drawn conceptual design exhibit utilizing aerial and GIS information to illustrate trees to be removed and proposed trees along Sagamore Parkway within the Project Limits. The exhibits shall be submitted to INDOT by MKSK on behalf of the Client for review and permit approval. Additionally, the Landscape Architect shall prepare a planting schedule for proposed trees and shrubs.

It is assumed in this scope of work that a hand-drawn conceptual design exhibit will be adequate to satisfy the requirements of the INDOT permit. If additional drawings or more refined drawings are required to satisfy INDOT permit requirements and/or reviewer comments, an additional services work authorization will be submitted by the Landscape Architect for approval by the Client in a timely manner.

Within this scope, one meeting on-site by the Landscape Architect with the Client to locate proposed trees and existing trees to be removed is assumed.

## **4.0 If-Authorized Services**

Services that may be required for the Project but not included in the Scope of Basic Services are listed in the attached Services Summary Exhibit A & C. The Landscape Architect shall not provide these services without written authorization from the Client.

## **5.0 Fee**

See attached Services Summary & Fee Proposal Exhibit A. Reimbursable expenses are an estimated, not to exceed amount.

## **6.0 Terms & Conditions**

See attached Exhibit F.

Again, thank you for considering MKSK for this project. We are excited to be working with Purdue University and are eager to begin this project.

Respectfully Submitted,

Eric Lucas, RLA, ASLA  
Principal

**Authorization**

\_\_\_\_\_  
Client (*Signature*)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client (*Name and Title*)



\_\_\_\_\_  
Eric M. Lucas for MSK2, LLC (dba MKSK)

\_\_\_\_\_  
02/17/2016

\_\_\_\_\_  
Date

**Exhibit A: Services Summary & Fee Proposal**

Basic Services (Lump Sum)	Fee	If Authorized Services*	Fee
Conceptual Design Exhibit & Submission of INDOT Permit	\$3,000	Programming & Project Scoping	tbd
		Measured Drawings	tbd
<b>Total Fees</b>	<b>\$3,000</b>	Soil Testing & Analysis	tbd
Expenses (4% of Design Fees)	\$120	Conformed Construction Drawings	tbd
		Coordination of Owner's Consultants	tbd
<b>GRAND TOTAL</b>	<b>\$3,120</b>	Value Analysis/Value Engineering	tbd
		On-Site Project Representation	tbd
		LEED Certification	tbd
		Record Drawings	tbd
		Multiple/Fast Track Bid Packages	tbd
		Contractor Scoping	tbd
		Division 0&1 Specifications	tbd
		Division 2-32 Specifications	tbd
		Management & Operations Estimating	tbd
		Site & Landscape Maintenance Plan	tbd
		Additional Presentations & Renderings	tbd
		Off Site / Nursery Visit Tree Tagging	tbd
		Additional Meetings	tbd
		Bidding or Negotiation Phase Services	tbd
		Construction Phase Services	tbd
		<b>Total</b>	<b>tbd</b>

See Exhibit C for If Authorized Service Descriptions

**Exhibit B: Project Responsibility Chart**

Task	Client	Landscape Architect
Project Program, Scope & Budget	Lead	
Survey & Base Information	N/A	Lead
Subsurface Investigation & Report	Lead	
Design & Construction Documents	N/A	Lead
Project Meetings - Design	Lead	Assist
Division 0-1 Specifications	N/A	
Division 2-32 Specifications	N/A	
Master Project Schedule	Lead	
Detailed Cost Estimating	Lead	Assist
Constructability Analysis	N/A	
Value Analysis/Value Engineering	N/A	
Permitting & Approvals	Assist	Lead
Assemble Bidding Documents	Lead	Assist
Bidding	N/A	

### **Exhibit C: If Authorized Service Descriptions**

**Programming & Project Scoping** – The Landscape Architect shall assist the Client/Owner in developing a program and scope of work for the project.

**Soil Testing & Analysis** – The Landscape Architect shall contract with a soil testing laboratory to measure soil characteristics relative to contamination, stormwater management, and plant health.

**Conformed Construction Drawings** – Following the Bidding & Negotiation Phase, the Landscape Architect shall incorporate all addenda and clarifications into a conformed set of construction drawings.

**Coordination of Client's Consultants** – The Landscape Architect shall coordinate the design schedule, lead meetings, and review submittals of design and engineering consultants contracted directly with the Client.

**Value Analysis/Value Engineering** – At the start of Construction Documents, the Landscape Architect shall, at no additional fee, provide Value Engineering services to reduce the cost of work to conform to the Project Budget. Once the cost of work is brought into conformance with the Project Budget, the Landscape Architect shall, as an additional service, make revisions to the documents required for cost over-runs with the exception of those changes initiated by the Landscape Architect.

**On-Site Project Representation** – The Landscape Architect shall provide construction phase services on-site at the project location through the duration of the construction.

**LEED Certification** – The Landscape Architect shall research, design, specify, and provide required background documentation to satisfy the desired LEED site requirements.

**Record Drawings** – The Landscape Architect shall assemble all Contractor as-built submittals into a Record Drawing plan in electronic format.

**Multiple/Fast Track Bid Packages** – The Landscape Architect shall prepare additional bid packages to facilitate a fast track or phased construction process.

**Contractor Scoping** – If the procurement strategy for the project involves multiple prime contractors, the Landscape Architect shall contract with a Construction Manager to define the scopes of work for each trade.

**Division 0 & 1 Specifications** – The Landscape Architect, with assistance from the Client, shall prepare the specifications for Procurement & Contracting Requirements (Div 00) and General Requirements (Div 01).

**Management & Operations Estimating** – The Landscape Architect shall prepare an estimate of anticipated maintenance and operations cost for the facility.

**Site & Landscape Maintenance Plan** – The Landscape Architect shall prepare a seasonal maintenance plan for the site improvements and plantings.

**Additional Presentations & Renderings** – The Landscape Architect shall prepare presentations and renderings beyond those required to convey the design intent of the project to the Client.

**Additional Meetings** – The Landscape Architect shall attend additional meetings beyond those specified.  
**Exhibit D: Project Scope**



**Exhibit E: Project Schedule**  
**TBD**

**MKSK**

**Exhibit F: Terms & Conditions**

# TERMS AND CONDITIONS OF PROPOSAL

**DIRECT PROJECT EXPENSES** Direct project expenses will be billed in addition to the fee for basic services and include actual out-of-pocket expenditures made in the interest of the Project. All direct project expenses will be invoiced at 1.2 times the actual amount. Direct project expenses include, but are not limited to mileage, courier and overnight delivery services, travel, hotel, car rental, etc. and may be adjusted annually. All International air travel, if required, will be by business class.

Requested documents to be printed in-house will be invoiced at the following rates: (excluding those for office use)

B/W Copy 8.5" x 11"	\$ 0.15	Color Plot 18" x 24"	\$ 15.00
B/W Copy 11" x 17"	\$ 0.30	Color Plot 24" x 36"	\$ 25.00
B/W Copy 18" x 24"	\$ 1.00	Color Plot 30" x 42"	\$ 35.00
B/W Copy 24" x 36"	\$ 2.00	Color Plot 36" x 48"	\$ 45.00
B/W Copy 30" x 42"	\$ 3.00	Color Pres.Plot18" x 24"	\$ 25.00
B/W Copy 36" x 48"	\$ 4.00	Color Pres. Plot 24" x 36"	\$ 45.00
Color Copy 8.5" x 11"	\$ 1.00	Color Pres. Plot 30" x 42"	\$ 70.00
Color Copy 11" x 17"	\$ 2.00	Color Pres. Plot 36" x 48"	\$ 85.00

**ADDITIONAL SERVICES / STANDARD HOURLY RATES** If the Scope of Work or if the Consultant's service is substantially revised, the amount of total compensation shall be equitably adjusted. Fees for requested additional services shall be computed at our standard hourly rates below or outlined under a separate proposal.

Senior Principal	\$ 195	Urban Planner II	\$ 95
Principal	\$ 175	Urban Planner III	\$ 85
Senior Associate	\$ 145	Urban Planner IV	\$ 60
Associate	\$ 130	Graphic Designer I	\$ 110
Landscape Architect I	\$ 110	Graphic Designer II	\$ 95
Landscape Architect II	\$ 100	Graphic Designer III	\$ 85
Landscape Architect III	\$ 95	Graphic Designer IV	\$ 60
Landscape Architect IV	\$ 60	Administration	\$ 60
Urban Planner I	\$ 110		

**RETAINER** If required, the Client shall make an initial payment as defined in the attached proposal as a retainer upon execution of this agreement. This retainer shall be held by the consultant and applied against the final invoice.

**PAYMENT DUE** Invoices shall be submitted monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the due date. The Consultant has been commissioned by the Client to provide professional services, which are independent of whether the Project for which they are provided is executed or not.

**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.

**DISPUTED INVOICE** If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within ten (10) calendar 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 ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) 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 due date of the invoice.

**INTEREST** If payment in full is not received by the consultant within forty-five (45) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent 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 unpaid principal.

**SUSPENSION OF SERVICES** If the Client fails to make payments when due or otherwise is in breach of this agreement, the Consultant may suspend performance of services upon seven (7) days' notice to the Client. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this agreement by the Client. Upon payment in full by the Client or cures of the breach to the satisfaction of the Consultant, the 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 other reasonable time and expense necessary for the Consultant to resume performance.

**TERMINATION OF SERVICES** If the Client fails to make payment to the Consultant in accordance with the payment terms herein, this shall constitute a material breach of this agreement and shall be cause for termination of this agreement by the Consultant.

**TERMINATION OF AGREEMENT** This agreement may be terminated by either party upon fifteen (15) days written notice with or without cause. The Client shall within thirty (30) days of termination compensate the Consultant for all services performed including all costs and direct project expenses incurred up to the date of termination.

**MEDIATION** In an effort to resolve any conflicts that arise during the design or construction or the project or following the completion of the project, the Client and the Design Professional agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

**APPLICABLE LAW** Unless otherwise specified, this agreement shall be governed by the laws of the State of Ohio.

**ENTIRE AGREEMENT** This agreement represents the entire and integrated Agreement between the Client and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Client and Consultant.

**LIMITATION OF LIABILITY** To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's officer's, directors, partners, employees and any of them, to the Client and anyone claiming by and through the Client, for any and all claims, losses, costs or damages, including attorney's fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Consultant under this Agreement, or the total amount of fifty thousand dollars (\$50,000), whichever is less. It is intended that this limitation apply to any and all liability or cause of

## TERMS AND CONDITIONS OF PROPOSAL

action however alleged or arising, unless otherwise prohibited by law.

**CONTRACTOR AND SUBCONTRACTOR CLAIMS** To the fullest extent permitted by law, the Client agrees to limit the liability of the Consultant and the Consultant's officer's, directors, partners, employees and sub-consultants to all construction contractors and subcontractors on the Project for any and all claims, losses, costs or damages of any nature whatsoever or claims expenses from any cause or causes including attorney's fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant and the Consultant's sub-consultants to all those named shall not exceed fifty thousand dollars (\$50,000) or the Consultant's total fee for services rendered on this Project, whichever is less. 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.

**OBSERVATION SERVICES** The Client understands that by not retaining the Consultant for construction observation services, there may be misinterpretations of the Consultant's plans and specifications during construction, which may lead to errors and subsequent damage. Inasmuch as the Client has elected to proceed with the Project without the Consultant providing construction observation services. The Client agrees to indemnify and hold-harmless the Consultant against any and all claims, damages, awards and cost of defense, which may arise out of the acts of the Contractor and Subcontractor performing work not in compliance with the intent of the design documents.

**UNAUTHORIZED CHANGES** The Consultant, upon delivery of documents is completely absolved and indemnified from any liability that may result from the interpretation or revision of documents for which the Consultant was not responsible.

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

**OWNERSHIP OF INSTRUMENTS OF SERVICE** All reports, drawings, specifications, electronic files, field data, notes and other documents and instruments prepared by the Consultant as instruments of services shall remain the property of the Consultant. The Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto.

**OPINIONS OF PROBABLE CONSTRUCTION COST** In providing opinions of probable construction cost, the Client understands that the Consultant has no control over the 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. The Consultant makes no warranty, express or implied, that the bids or negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

**SHOP DRAWING REVIEW** The Consultant shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The Consultant's review shall be conducted with reasonable promptness while allowing sufficient time in the Consultant's judgment to permit adequate review. Review of a specific item shall not indicate that the Consultant has reviewed the entire

assembly of which the item is a component. The Consultant shall not be responsible for any deviations from the Construction Documents not brought to the attention of the Consultant in writing by the Contractor. The Consultant shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

**INFORMATION PROVIDED BY OTHERS** The Client shall furnish, at the Client's expense, all information requirements, reports, data, surveys and instructions 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.

**DELIVERY OF ELECTRONIC FILES** In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project for which they were prepared. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant. The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and sub-consultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any reuse of the electronic files without the prior written consent of the Consultant. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

**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.

**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.

**ASSIGNMENT** Neither party to this Agreement shall transfer, sublet or assign any rights 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. Subcontracting to sub-

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consultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

**PROPRIETARY INFORMATION** The Client agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Consultant pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Consultant.

**ADA COMPLIANCE** The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility that does not meet the accessibility and usability requirements of the ADA unless it can be demonstrated that it is structurally impractical to meet such requirements. The Client understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Consultant, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Consultant, however, cannot and does not warrant or guarantee that the Client's Project will comply with all interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

**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, an Ohio corporation, and not against any of the Consultant's individual employees, officers or directors.

**BETTERMENT** If, due to the Consultant's negligence, a required item or component of the Project is omitted from the Consultant's construction documents, the Consultant shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. 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.

**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 of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

**CONTINGENCY** The Owner and the Consultant agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the drawings and specifications prepared by the Consultant and, therefore, that the final construction cost of the Project may exceed the estimated construction cost. The Owner agrees to set aside a reserve in the amount of at least ten (10) percent of the Project construction costs as a contingency to be used, as required, to pay for any such increased costs and changes. The Owner further agrees to make no claim by way of direct or third-party action against the Consultant or its sub-consultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such

changes.

**CONSEQUENTIAL DAMAGES** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or sub-consultants 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 to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

**CHANGED CONDITIONS** 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 re-negotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating re-negotiation, and the Consultant and the Client shall promptly and in good faith enter into re-negotiation 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.

**DEFINITION OF 'HAZARDOUS MATERIALS'** As used in this Agreement, the term hazardous materials shall mean any 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.

**HAZARDOUS MATERIALS – SUSPENSION OF SERVICES** Both parties acknowledge that the Consultant's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.

**HAZARDOUS MATERIALS INDEMNITY** The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees and consultants (collectively, Consultant) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.