



February 18, 2025

TO: Parks and Recreation Advisory Committee
FROM: Ron Munds, General Manager
SUBJECT: **Agenda Item 3 – 02/18/2025 PRAC Meeting**
Sunnyside School Status Update

STAFF RECOMMENDATION

Receive update and provide input.

DISCUSSION

Background

At the July 16, 2024 PRAC meeting, the committee discussed the announcement by the San Luis Coastal Unified School District (School District) of the sale of Sunnyside School. As a review, the site is approximately 12 acres and is the middle of town. It has presents opportunities for multiple recreational benefits while continuing the use of the buildings for existing commercial uses.

It is unique for parcel of this size, location and zoning to become available. On January 22, 2025, the District received a notice from San Luis Coastal Unified School District stating the intention to “dispose” Sunnyside School as “exempt surplus land” and the availability to the District for open space purposes. The notice went on to say that the District had sixty (60) days from receipt of the notice to submit an offer.

It is the District’s understanding that the School District has been in discussion with the County since July regarding the possible purchase of the site. Over the course of time, the County has had closed session meetings regarding the purchase, the last being on February 4th. On February 6th, Director Fourcroy, Los Osos Community Advisory Council (LOCAC) President Deborah Howe and I met with Supervisor Gibson, CAO Matt Pontes, Director of Parks & Recreation Tanya Richardson and Assistant Director of Parks & Recreation Shaun Cooper to receive a status update on the County Board of Supervisors internal discussions. It was stated that because of budget constraints, the County is unable to commit to purchase the property but has indicated willingness to partner with the District if the District takes the lead towards purchase and future maintenance of the property.

At the February 6th Board meeting, the Board received a summary of those talks and directed staff to investigate technical support to assist in estimating future costs for improvements and maintenance. Staff reached out to the Wallace Group, who the District contracts with for engineering services, to support the initial effort to analyze and provide cost estimates for reference in the deliberations. Having a preliminary number on cost will help facilitate discussions for the Board, committees and public if it is decided to move forward. The Board approved a scope of work and budget Staff is requesting the approval of work scope and budget to proceed with the assessment of purchasing Sunnyside School.

President

Christine M. Womack

Vice President

Matthew D. Fourcroy

Directors

Charles L. Cesena
Tom Cross
Richard Hubbard

General Manager

Ron Munds

District Accountant

Robert Stilts, CPA

Unit Chief

John Owens

Battalion Chief

Paul Provence

Mailing Address:

P.O. Box 6064
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2122 9th Street, Suite 110
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LOCAC/District Coordination

At the last meeting, it was reported that the District and the Los Osos Community Advisory Council (LOCAC) have been in discussions to explore joint opportunities to further the community discussion on park space. The intent of the coordination with LOCAC was to broaden the outreach opportunities for community involvement through each entities network of communication.

Participants in the coordination meetings included representatives of LOCAC, the District and guest participants from the County Parks Commission and other stakeholders. The goal was to discuss the broader park opportunities for the community. Though not the primary focus, the acquisition of Sunnyside School was discussed at length. The assumption was that the County would purchase, and the community would support in some form is to be determined.

It was agreed that a town hall meeting(s) would be needed gauge community support. Staff and LOCAC are currently working on organizing the event for some time between the middle to end of March. More details will be available in the next two weeks.

Board Action Update

The Board called a Special meeting for February 13th to receive an update on the Sunnyside School and approve a proposal from Wallace Group to assist with developing the information needed for the town hall meeting. The outcome of the meeting was the appointment of an Ad Hoc Committee of two Board members to assist the General Manager with the upcoming work and the approval of the proposal from the Wallace Group.

Attachments

San Luis Coastal Unified School District Letter
Wallace Group Scope of Work and Budget



SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT

1500 Lizzie Street
San Luis Obispo, CA 93401-3062
(805) 549-1200

January 17, 2025

Los Osos Community Services District
Attn: Parks and Recreation Advisory Committee
P.O. Box 6064
Los Osos, CA 93412

VIA U.S. FIRST-CLASS MAIL

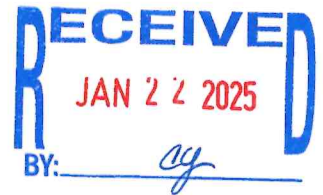
Re: Notice of Availability of Surplus Property for Open-Space Purposes

To Whom It May Concern:

The San Luis Coastal Unified School District ("District") is providing notice that it intends to dispose of the surplus property indicated below in this notice, which the District has declared to be "exempt surplus land" pursuant to Government Code section 54221, subdivision (b)(1). Notwithstanding the exemption, you are being provided this notice of availability for open-space purposes pursuant to Government Code sections 54221, subdivision (f)(2) and 54222, subdivision (b) because the property is located within the Coastal Zone. (Gov. Code, § 54221, subd. (f)(2)(A).) Please note that the term "open-space purposes" is defined as "use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources." (Gov. Code, § 54221, subd. (e).)

The surplus real property is located at 880 Manzanita Drive, Los Osos, San Luis Obispo County, California, currently designated as Assessor's Parcel Number 074-331-001, as more particularly depicted in Exhibit A ("Sunnyside").

All offers for open-space purposes must be received in writing within sixty (60) days of receipt of this notice. The District will consider offers to purchase, lease, or exchange the property. Please direct all offers, questions, or requests for further information regarding the property to the undersigned.



Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Pinkerton". The signature is stylized and cursive.

Ryan Pinkerton

Assistant Superintendent, Business Services

Enclosure



February 13, 2025

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

Subject: Sunnyside School Acquisition & Park Conceptual Plans

Dear Ron Munds:

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

I. PROJECT UNDERSTANDING

Wallace Group understands the San Luis Coastal Unified School District is selling the Sunnyside School (School) property in Los Osos and the County has been engaged with the school district to talk about the potential sale for use as park space and other uses. We understand that the County may participate in the acquisition, but the Los Osos Community Service District (CSD/District) and community need to pay for the majority of the costs and ongoing O&M.

In order to facilitate discussions on the acquisition, Wallace Group understands the CSD would like assistance with pulling together a community townhall meeting which is likely to occur towards the end of March. The intent of the meeting is to explore the arrangement and costs of the various program activities shared previously. We understand that the Waldorf School (who is currently occupying some of the buildings) has provided a rudimentary map of the site with some of these items included (see figure 1 below).



Figure 1 - Waldorf School Diagram



CIVIL AND
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CONSTRUCTION
MANAGEMENT

LANDSCAPE
ARCHITECTURE

MECHANICAL
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PLANNING

PUBLIC WORKS
ADMINISTRATION

SURVEYING /
GIS SOLUTIONS

WATER RESOURCES

WALLACE GROUP
A California Corporation

612 CLARION CT
SAN LUIS OBISPO
CALIFORNIA 93401

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We have received and reviewed the list of program activities the CSD received from previous meetings which includes the following items:

- Dog Park;
- Pickleball courts;
- Community Gardens;
- An Inclusive playground;
- Sports fields (soccer and softball/baseball);
- Volleyball;
- And Basketball;

II. SCOPE OF SERVICES

TASK 1: PROJECT MEETINGS, MANAGEMENT AND ADMINISTRATION

This task includes the project management and administration time for the project, including internal team coordination needs, project setup, budget/schedule monitoring, status updates, and invoicing. This task also includes the meetings for the project including on-going meetings as needed to help facilitate the project. For budgeting purposes, we assume up to four (4) videoconference meetings with the District.

Deliverables:

- On-going Project Management & Administration
- Four (4) Videoconference Meetings

TASK 2: SITE VISIT, INVENTORY & ANALYSIS, AND BASEMAP

The initial kick off and inventory phase will help by establishing a firm understanding of the project by reviewing and assessing the existing site as-builts, data, site conditions, buildings, and other key elements of the site. We will also work on generating a thorough understanding of the project site which is critical for creating a solid foundation of information for the project team to refine the design and ensure that site constraints will not impact further design suggestions. The tasks included will allow us to update previous studies based on the team's needs and provide a final memo and base map for the District's review. This task also includes the time needed to develop a basemap for the site. The basemap will utilize high resolution imagery and any available terrain data for conceptual design purposes. The basemap will not include any surveying information at this time unless provided by the District.

Deliverables:

- Kick-off meeting/site visit (assume 4 hours)
- Review and assess existing site as-builts and data
- One (1) memo of design constraints and opportunities
- Base map generation

TASK 3: CONCEPTUAL EXPLORATION & OUTREACH EVENT

This task involves the conceptual exploration of the site and development of two (2) rough concept diagram plans for the community's input. The plans will show in a diagrammatic manner the location of the proposed amenities as listed under the project understanding. The team will also prepare preliminary cost studies for each option along with operations & maintenance costs for discussion and review with the District staff ahead of the public outreach event.

The team will prepare for and attend one (1) community meeting. We assume the location, refreshments (if desired), and outreach announcements will be provided and managed by the District. The team will supply the concept boards (assumed to be two (2) 36" x 48" boards) along with handout materials to help facilitate the meeting.



Following the public meetings, the team will document the findings into a community engagement summary.

Deliverables:

- Generate initial design concept plans (2 total) (36"x48" boards)
- Attend Public community meeting
- Community engagement summary (design input summary) (pdf)
- O&M and estimates of probably construction costs studies (pdf)

TASK 4: CONCEPTUAL REFINEMENT

This task will take the input from the two (2) concept plans and develop them into one (1) final conceptual plan for the District's use. The team will take the major conceptual themes and ideas from the highest voted plan and plan amenities and refine them into one conceptually rendered plan. The team will also refine the preliminary cost studies for the selected option along with operations & maintenance costs for discussion and review with the District staff.

Deliverables:

- One conceptual plan graphic (36" x 48" pdf)
- O&M and estimates of probably construction costs studies

III. SCHEDULE

Below is the tentative schedule for the project:

- Site Visit, Assessment & Inventory, & Basemap - Approx. 2 weeks
- Conceptual Exploration & Outreach Event #1 - Approx. 3 weeks
- Conceptual Refinement - Approx. 3 weeks

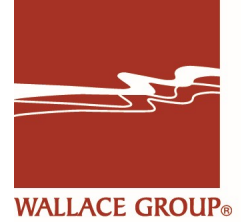
IV. TO BE PROVIDED BY THE CLIENT

- Boundary and Topographic Survey in AutoCAD .dwg format.
- Geotechnical Report with grading and pavement recommendations
- Site plan and building footprint in AutoCAD .dwg format.
- Other items needed to fulfill the scope of services

V. ITEMS NOT INCLUDED IN SCOPE OF SERVICES

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

- Topographic Mapping and Survey
- Drainage Report
- Offsite improvements
- Fire Protection Engineering
- Final Plans, Specs and Estimates
- Any Items Not Specifically Listed Under Scope of Services



VI. PROJECT FEES

Wallace Group will perform the services denoted in Task 1-4 of the proposed Scope of Services on a time and materials basis. For budgeting purposes, our preliminary estimate of fees is indicated below. These services will be invoiced monthly on an accrued basis in accordance with the attached Standard Billing Rates (Exhibit A).

Task 1: Project Meetings, Management & Administration	\$ 6,000-\$8,000
Task 2: Site Visit, Inventory & Analysis, & Basemap	\$ 10,000-\$12,000
Task 3: Conceptual Exploration & Outreach Event	\$ 17,000-\$20,000
Task 4: Conceptual Refinement	\$ 7,000-\$10,000

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

VII. TERMS AND CONDITIONS

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

We want to thank you for this opportunity to present our proposal for design services. If you would like to discuss this proposal in greater detail, please feel free to contact me.

Sincerely,

WALLACE GROUP, a California Corporation

TERMS AND CONDITIONS ACCEPTED:

Matthew Wilkins, PLA 6398, LEED AP
Director of Landscape Architecture
612 Clarion Court
San Luis Obispo
California 93401
T 805 544-4011
F 805 544-4294
www.wallacegroup.us

Signature

Printed Name

Title

Date

Attachments
JMR: PP25-8378, 2025, std
Exhibit A
Exhibit B

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

Exhibit A
Standard Billing Rates



Landscape Architecture Services:

Associate Landscape Designer I - II	\$110/\$120
Designer I - IV	\$125/\$130/\$135/\$140
Landscape Architect I - IV	\$148/\$153/\$158/\$163
Senior Landscape Architect I - III	\$168/\$173/\$178
Director	\$195
Principal Landscape Architect	\$215
Principal.....	\$280

Support Services:

Office Assistant	\$120
Project Assistant I - III.....	\$130/\$135/\$145

Right to Revisions:

Wallace Group reserves the right to revise our standard billing rates on an annual basis, personnel classifications may be added as necessary.

Additional Professional Services:

Fees for expert witness preparation, testimony, court appearances, or depositions will be billed at the rate of \$400 an hour. If required to meet schedule requests, overtime on a project will be billed at 1.5 times the employee's typical hourly rate.

Direct Expenses:

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

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

Invoicing and Interest Charges:

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

Exhibit B
Standard Terms and Conditions
Wallace Group Proposal No. PP25-8378
Contract Agreement Date: February 13, 2025

CLIENT: LOS OSOS COMMUNITY SERVICES DISTRICT
2122 9th Street, Suite 110, Los Osos, California 93402

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

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

ARTICLE 1. GENERAL PROVISIONS

1.1 Preamble

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

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

1.2 Governing Law and Jurisdiction

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

1.3 Precedence of Conditions

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

1.4 Standard of Care

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

1.5 Corporate Protection

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

1.6 Confidentiality

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

1.7 Third-Party Beneficiaries

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

1.8 Timeliness of Performance

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

1.9 Severability

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

1.10 Survival

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

1.11 Statutes of Repose and Limitation

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

1.12 Defects in Service

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

1.13 Jobsite Safety

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

1.14 Assignment: Subcontracting

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

1.15 Force Majeure

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

1.16 Disputes

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

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

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

1.17 Attorneys' Fees

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

1.18 Services by CLIENT

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

1.19 Retention

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

ARTICLE 2. DEFINITIONS

2.1 Burdened Labor Costs

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

2.2 Direct Expenses

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

ARTICLE 3. COMPENSATION

3.1 Payment Due

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

3.2 Interest

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

3.3 Collection Costs

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

3.4 Termination or Suspension of Services

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

3.5 Retention Discounts

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

3.6 Satisfaction with Services

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

3.7 Disputed Invoices

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

3.8 Payments to the CONSULTANT

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

3.9 Advance Payment: Withholding Work Product

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

ARTICLE 4. SERVICES, ADDITIONAL SERVICES, AND AMENDMENTS

4.1 Definitions

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

4.2 Services During Construction

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

4.3 Soil Testing

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

4.4 Opinion of Probable Construction Costs

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

4.5 Additional Services

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

ARTICLE 5. TERMINATION OF AGREEMENT

5.1 Due to Default

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

5.2 Without Cause

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

5.3 Termination Adjustment: Payment

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

ARTICLE 6. LIMITATION OF LIABILITY: WAIVER: WARRANTY

6.1 Limitation of Liability

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

6.2 Contractor and Subcontractor Claims

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

6.3 Warranty

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

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

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

6.4 Interpretation

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

6.5 Delays

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

ARTICLE 7. HAZARDOUS WASTE MATERIALS

7.1 Liability

CONSULTANT hereby states and CLIENT hereby acknowledges that CONSULTANT has no professional liability insurance for claims arising out of the performance of or failure to perform professional services, including, but not limited to the preparation of reports, designs, drawings and specifications, related to the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing substances including, but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site. Accordingly, the CLIENT hereby agrees to bring no claim for negligence, breach of contract indemnity or otherwise against the CONSULTANT, its principals, employees, and agents if such claim, in any way, would involve the CONSULTANT'S services for the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or hazardous waste materials. CLIENT further agrees to defend, indemnify and hold harmless CONSULTANT, its officers, directors, principals, employees and agents from any asbestos and/or hazardous waste material related claims that may be brought by third parties as a result of the services provided by the CONSULTANT pursuant to this agreement except claims caused by the sole negligence or willful misconduct of the CONSULTANT.

ARTICLE 8. OWNERSHIP AND REUSE OF DOCUMENTS

8.1 CONSULTANT Ownership

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

8.2 Document Reuse

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

8.3 Electronic Media Alteration and Reuse

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

ARTICLE 9. CONDOMINIUM PROJECTS

9.1 Condominium Conversion

The CLIENT does not now expect this project will be converted into condominiums. Because this project will not be designed for condominium ownership, the CLIENT agrees that if, the CLIENT decides to convert the project into condominiums in the future, the CLIENT will, to the fullest extent permitted by law, 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 out of or in any way connected with the conversion to condominium ownership, except for the sole negligence or willful misconduct of the CONSULTANT.