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CITY OF AMESBURY
IN THE YEAR TWO THOUSAND TWENTY-THREE

SPONSORED BY: Kassandra Gove **BILL No. 2023-150**
Kassandra Gove, Mayor

An Order to appropriate \$22,000 from Sewer Retained Earnings and \$22,000 from Water Retained Earnings to Sewer and Water Other Expenses.

Summary: This order requests an appropriation from Sewer and Water Retained Earnings to Other Expenses (account number 620 0440 5316 00 and 610 0450 5316 00) to hire consultants to administer and complete a water, sewer and stormwater rate study and general consulting.

Be it Ordered by the City Council of the City of Amesbury assembled, and by the authority of the same as follows:

That \$22,000 is hereby appropriated from Sewer Retained Earnings and \$22,000 from Water Retained Earnings to Sewer and Water Other Expenses.



COMPREHENSIVE
ENVIRONMENTAL
INCORPORATED

41 Main Street
Bolton, MA 01740
508.281.5160

November 2, 2023

Mr. Joe Buckley, Director of Public Works
City of Amesbury
City Hall
62 Friend Street
Amesbury, MA 01913

**RE: CEI Scope of Services
Funding Development Support**

Dear Mr. Buckley:

Comprehensive Environmental Inc. (CEI) is pleased to submit this Scope of Services to assist the City of Amesbury in exploring sources of funding and capital planning/capital budgeting. Work will be done by both CEI and The Abrahams Group as outlined below. Services will include the following:

Task 1 – Water, Sewer, Stormwater Rate Assistance \$33,000

The Abrahams Group will be a CEI subcontractor but work directly with the City to prepare a water, sewer, and stormwater study with a goal of ensuring that sufficient revenue is generated to fund water, sewer, and stormwater operational costs, indirect costs, debt service costs, and short-term and long-term capital improvements. The Abrahams Group will work directly with the City to complete the following subtasks:

1. Develop General Approach;
2. Review Capital Improvement Program;
3. Evaluate Project Water, Sewer, and Stormwater Costs;
4. Develop Non-Meter Revenue Requirements;
5. Develop Consumption Estimates and Review Billing System;
6. Develop a Five-Year Analysis;
7. Update Water and Sewer Rates and Establish a Stormwater Fee;
8. Project Revenue and Conduct Impact Analysis;
9. Prepare Draft Rate Study Report for the City's Review; and
10. Finalize Report.

Note, all work under this task will be completed by The Abrahams Group per their attached proposal dated September 27, 2023 and in coordination with the City. The City will provide all oversight and review for this task. CEI has not assumed any hours for this task, however, can be available for consultation upon City request, at standard hourly rates, per Task 3.

Task 2 – Budget Assistance

\$7,500

Under this task, CEI will work with the City to develop a stormwater budget for future years. Actual items are to be determined under this task, however, they may include:

- Stormwater infrastructure upgrades, such as catch basins, manholes, and piping
- Culvert upgrades or retrofits;
- Additional equipment and/or personnel;
- Operation and maintenance, such as catch basin cleaning and street sweeping;
- MS4 Permit compliance; and
- Water quality improvements, such as stormwater Best Management Practice (BMP) installation.

As part of this task, CEI will also develop an abbreviated Capital Improvement Plan with a goal that it can eventually lead to the development of an Asset Management Plan for the City, for stormwater only, under a future project, potentially funded through a state grant.

Task 3 – General Consulting

\$3,500

CEI has assumed that additional assistance may be requested above and beyond those identified in previous tasks. This Task will allow for general consulting to address miscellaneous requests and/or meetings as allowed within the available budget.

COST AND SCHEDULE

The above work can be completed in accordance with the attached Standard Terms and Conditions for the following costs:

Task 1 – Water, Sewer, Stormwater Rate Assistance	\$33,000
Task 2 – Budget Assistance	\$7,500
Task 3 – General Consulting	<u>\$3,500</u>

TOTAL: \$44,000

Additional work performed by CEI can be completed on a time and materials basis using our standard rates upon City approval.

If you have any questions about the above scope of services please feel free to call me at 800-725-2550 ext. 301, Stephane Hanson shanson@ceiengineers.com x318, or Nick Cristofori ncristofori@ceiengineers.com x303, of my staff. If this meets with your approval, please indicate so by signing below and returning a copy to me.

Sincerely,

COMPREHENSIVE ENVIRONMENTAL INC.



Eileen Pannetier
President

ACCEPTED BY:

[Your signature below will serve as authorization for CEI to proceed with the scope of work on the above referenced project.]

Signature

Date

Name (Printed)

Title

Attachments:

The Abrahams Group Proposal dated September 27, 2023
Standard Terms & Conditions

THE ABRAHAMS GROUP

FOR BETTER GOVERNMENTS

September 27, 2023

Ms. Stephanie Hanson, PMP, CSE
Comprehensive Environmental Inc.
Principal Scientist | Project Manager
21 Depot Street, Merrimack, NH 03054
41 Main Street, Bolton, MA 01740

Dear Ms. Hanson:

I am pleased to submit this letter in response to your request for The Abrahams Group to provide water, sewer, and stormwater rate assistance to the City of Amesbury. This letter describes the project's background and objectives, and our workplan, qualifications, staffing, timing, and fees.

BACKGROUND AND OBJECTIVES

The City of Amesbury provides water, sewer, and stormwater services to its residents and businesses. The City charges a flat \$9.00 per 100 cubic feet for water use and \$7.75 per 100 cubic feet for sewer flow with a minimum bill of \$121.88 per quarter. The City also has permit/tap fees and several service fees. The City is considering establishing a flat fee for stormwater. The last rate increase was in 2021. Amesbury contracts with Pennichuck Water Service Company to produce and process water/sewer bills.

Thus, the objectives of this project are to work with City officials and Comprehensive Environmental Inc. to prepare a water, sewer, and stormwater study that will ensure sufficient revenue is generated to fund water, sewer, and stormwater operational costs, indirect costs, debt service costs, and short-term and long-term capital improvements.

WORKPLAN

To meet the project's objectives, the following workplan will be completed.

Task 1 - Develop General Approach

The objective of this task is to identify the City's rate-setting policy objectives and cost-recovery goals. In this task, the general approach and policy issues which will govern the project will be discussed and reviewed with City officials. Various rate-setting issues (e.g., minimum charge, rates by tier, fire protection charges, property type, cross connection charges, service charges, stormwater fees, water capital charge, and other related fees and charges) will be

19 RIDGEWOOD STREET ASHLAND, MA 01721

BETTERGOV@AOL.COM • WWW.THEABRAHAMSGROUP.COM • PHONE (617) 803-8529

discussed with City officials at the start of the project, establishing preliminary water rate guidance. We will review and discuss each of the City's objectives during this task. This guidance will shape subsequent decisions for developing and allocating costs and designing an appropriate rate structure.

Task 2 - Review Capital Improvement Program

The objective of this task is to review the planned water, sewer, and stormwater capital improvement projects. This task will include a review of the status of the water, sewer, and stormwater-related debt service and bonds authorized, the age and condition of the systems, and the need to fund long-term capital improvements to those systems. We will also discuss the City's MS4 permitting plans.

Task 3 - Project Water, Sewer, and Stormwater Costs

The objective of this task is to determine the total projected costs of water, sewer, and stormwater operations for FY 2024. The City will be responsible for providing all engineering and financing assumptions and budget and actual data. With these assumptions and data available, the following sub-tasks will be completed:

- Determine water, sewer, and stormwater costs for a "base year." The City's water, sewer, and stormwater data from a recent fiscal year (likely FY 2023 actual or FY 2024 as budgeted) will be utilized as base-year data. The completeness and reasonableness of base-year costs will be reviewed as a building block to project "rate year" costs and associated revenue requirements. Costs should include personal services, O & M expenses, capital outlay, existing water-related debt service, new capital, and indirect and overhead costs. Reviewing existing financial reports regarding costs and income will be included in this sub-task.
- Incorporate the estimated cost impact of capital improvement and infrastructure renewal plans from Task 2.
- Develop "rate year" costs by adjusting base-year cost numbers for known and measurable, measurable, and attrition adjustments based upon agreed-upon City assumptions. The rate year will be FY 2024 (July 1, 2023, to June 30, 2024). Known and measurable costs include debt service, contracts, and other similar items. Measurable items are those that the City knows will occur but cannot measure at this time. Estimates will be made for these items. An attrition or inflation factor will be used to estimate other items that are not known and measurable and are not measurable. City cost assumptions will be reviewed for reasonableness.

We will review/refine the City's indirect cost analysis for costs incurred by the general fund on behalf of the enterprise funds for central services, fringe benefits, insurance, and similar costs.

If the City does not have an indirect cost plan, we will discuss increasing the scope of this study to develop one.

This task will produce projected FY 2024 water, sewer, and stormwater budgets, including total water, sewer, and stormwater operating costs (including indirect costs) and capital costs required or projected.

Task 4 - Develop Non-Meter Revenue Requirements

Once the total costs have been projected from Task 3, non-meter revenue requirements for water, sewer, and stormwater (if any) will be determined. The City has permit/tap fees and several service fees. The total revenue requirement, less non-metered revenue, determines the net amount of revenue to be recovered for water usage, sewer flow, and stormwater fees. Non-metered revenue will be reviewed for the base year. Note this is not a cost-of-service study.

Task 5 - Develop Consumption Estimates and Review Billing System

The objectives of this task are to conduct a billing analysis based on the recent water consumption, sewer flow, and stormwater data, and to project consumption for FY 2024. We will work with the City to conduct a three-year review of consumption and billed amounts and a projection of where statistics show each will go in upcoming years. We will also review City data related to pervious and impervious areas, if available.

The City will need to provide, in Excel, consumption, flow data and dollars by class, by account, and by tier for a recent 12-month period and summary data for the past three years. Projected consumption growth will be analyzed as part of this task. Consumption growth assumptions will be discussed with City officials and documented. These consumption growth assumptions will be used subsequently in this study. Should the City need additional assistance with the billing data or system, and/or stormwater data, we will address the scope and the costs with the City.

Task 6 - Develop a Five-Year Analysis

The objective of this task is to develop a five-year analysis by expanding the revenues and expenditures analyses to FY 2024 - FY 2028. This task will entail meeting with City officials to discuss projections to revenues, flow, and expenditures, including capital needs over the five-year period and how related debt service would impact water, sewer, and stormwater rates.

Task 7 - Update Water and Sewer Rates and Establish a Stormwater Fee

As part of this task, we will recommend rates designed to recover water, sewer, and stormwater costs, to strengthen their revenues, and to provide sufficient reserves. The FY 2024 data and five-year analysis will be used to determine recommended rates and recommended rates will be

pursuant to City policy and objectives discussed in Task 1. If rate impact is deemed to be excessive, alternative strategies will be discussed with the City.

The stormwater fee will most likely be a flat fee that could be a revenue source to the sewer fund or the base for a stormwater enterprise fund. The establishment of a stormwater enterprise fund is beyond the scope of this study.

Task 8 - Project Revenue and Conduct Impact Analysis

As part of this task, projected revenues based on the proposed new rates from Task 7 and the projected level of consumption from Task 5 will be determined. The impact of the new rates on selected water, sewer, and stormwater customers will be reviewed with City officials. Using recent consumption data for both "average" and certain selected customers, customers' bills using the proposed rates will be projected. These projected bills will be compared to the customers' bills under the City's current rates (except for stormwater). This important analysis will help to highlight equitability issues and help identify and analyze potential "rate shock". Implementation lag impact will also be discussed.

Task 9 - Prepare Draft Rate Study Report for the City's Review

As part of this task, a draft report will be prepared to present the results of the study. This report will summarize the findings and recommendations from our review of the projected costs, consumption/billing analysis, revenue requirements, rate design, revenue projections, and impact analyses. The draft report will be submitted to the City for review and comment. We will review preliminary findings and the draft rate study with City officials. Cost, revenue, and consumption assumptions for FY 2024 - FY 2028 will be reviewed with City officials. Modifications to the cost, revenue, and consumption assumptions will be discussed, documented, and included in the draft report.

Task 10 - Finalize Report

A final report will be submitted once we receive written comments back from the City. The final report will incorporate all comments received from the City. We will present the final report to the City Council at a mutually convenient time.

STAFFING AND QUALIFICATIONS

Mr. Mark D. Abrahams, President of The Abrahams Group, will serve as the project manager and consultant and be responsible for the successful completion of the project. Mr. Abrahams is an independent consultant and has worked on numerous similar water rate projects.

He has developed water/sewer/stormwater rates and indirect cost plans for the cities of Chelsea, Everett, Gloucester, Holyoke, Lowell, Marlborough, Methuen, Quincy, Newport, Providence, and Pawtucket, the Narragansett Bay Commission, the Hull Permanent Sewer Commission, and

the towns of Andover, Arlington, Ashburnham, Ashland, Bellingham, Braintree, Canton, Concord, Franklin, Holbrook, Hopkinton, Longmeadow, Marblehead, Medway, Millbury, Millis, Provincetown, Randolph, Reading, Rutland, Saugus, Southbridge, Sterling, Tyngsborough, Watertown, Wayland, Wakefield, West Boylston, West Groton, West Newbury, and Winchester, the Wayland Sudbury Septage Treatment Facility, and the Dighton Water District. He has developed a cost/revenue model to facilitate plans for the towns on Cape Cod to finance their wastewater plans and a more detailed model for the Town of Orleans. He has developed water financing plans for the towns of Charlton, Easton, Hopkinton, Provincetown, and Wellfleet. He has developed sewer financing plans for the City of Gloucester and the towns of Hopkinton, Nantucket, Orleans, and Provincetown. He has developed seasonal water rates for Newport, Provincetown, and Nantucket. He has conducted many revenue studies for Massachusetts municipalities and districts. Mr. Abrahams has also taught Uniform Municipal Accounting System (UMAS) and Enterprise Fund Accounting for the past 30 and 15 years, respectively. Mr. Abrahams has over 30 years' experience.

Mr. Abrahams has a Bachelor's Degree in Political Science from Lake Forest College, a Master's Degree in Political Science from the Urban Studies Institute of the University of Toledo, and an MBA from Suffolk University. He is a Certified Public Accountant and is a member of the Massachusetts Society of CPAs Government Accounting and Auditing Committee. He is co-chair of the New England Water Works' Financial Management Committee.

Mr. **Matthew Abrahams**, Principal with The Abrahams Group, will serve as staff on this project. Matthew has assisted his father on several water projects including the Avon, Brockton, and Plymouth water audits, and rate and/or indirect cost studies for the towns of Bellingham, Braintree, Hopkinton, Medway, Millis, Nantucket, Norton, Randolph, Rutland, Saugus, Wakefield, Watertown, Wayland, Webster, West Newbury, Winchester, and Winthrop, and the cities of Holyoke, Marlborough, Methuen, Somerville, and Taunton. He has developed a cost/revenue model to facilitate plans for the towns on Cape Cod to finance their wastewater plans and a more detailed model for the Town of Orleans. He has conducted multiple revenue studies for Massachusetts municipalities and districts.

He holds a BS degree in Mathematics/Computer Science from Colgate University.

Additional qualifications, references, and resumes are available upon request. Additional staff may assist on this project.

TIMING

The City wishes to begin this project as soon as possible so the City can move on its rates and our recommendations can be implemented effective January 1, 2024. We agree to this schedule.

Ms. Stephanie Hanson, PMP, CSE
Comprehensive Environmental Inc.
September 27, 2023
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FEES

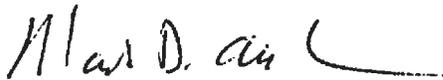
Professional fees are based on the amount of time spent on a project. In addition, out-of-pocket expenses for such items as travel and mail are reimbursed. Based upon the workplan, professional fees and out-of-pocket expenses for this project will be \$33,000.00.

The City will be responsible for copying and distributing project deliverables, progress reports, and schedules. Progress billings will be submitted on a bi-weekly basis which are payable upon receipt.

* * * * *

We are pleased to submit this proposal to Comprehensive Environmental Inc. I will be pleased to discuss this letter with you at your earliest convenience.

Sincerely yours,

A handwritten signature in black ink that reads "Mark D. Abrahams" followed by a stylized flourish.

Mark D. Abrahams, CPA
President

Standard Terms and Conditions for Engineering and Consulting COMPREHENSIVE ENVIRONMENTAL INC.

These Terms and Conditions, together with Consultant's (hereinafter called CEI) Scope of Work, make up the Agreement between CEI and you, the CLIENT names in the Scope of Work.

1. Independent Consultant

This contract is a pass through of an accounting subcontractor for the purpose of assisting the City of Amesbury, MA with rate studies for water, sewer and stormwater (as outlined in Task 1 of the Scope of Services). CEI (Prime) is independent from the subcontractor, The Abrahams Group (Subcontractor), and will not be responsible for errors or omissions of the Subcontractor.

2. Scope of Services

CEI's scope of services includes Tasks 2 and 3 only, as outlined in the scope of work.

3. Standard of Care

CEI will perform the services with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services at the same time under similar conditions in the same or similar locality. The foregoing standard of care is in lieu of all other standards and warranties, express or implied, including warranties of marketability or fitness for a particular purpose. Client will notify CEI with reasonable specificity of any deficiencies in the services within 30 days of discovery but in no event later than 120 days after substantial completion of the services, and Client will give CEI a reasonable opportunity to correct the deficiencies.

4. Payment

The Client agrees to pay CEI in accordance with the payment terms provided in the Scope of Services. Invoices for services and reimbursable expenses may be submitted monthly. Invoices shall be considered past due if not paid within 30 days after invoice date. For Past Due accounts, CEI may without waiving any claim or right against Client, and without liability whatsoever to the Client, terminate the performance of the service upon 10 days written notice. Retainers shall be created on the final invoice. A service charge will be charged at 1.5% (or the legal rate) per month on the unpaid balance. In the event any portion of an account remains unpaid 90 days after billing, the Client shall pay cost of collection, including reasonable attorney's fees.

Any change in the Scope of Services or alteration or modification of the work to be performed shall be expressly authorized and approved by the Client in writing. In the event of any such approval, and authorization by the Client, the Contract Price as shown in the attached Scope of work shall be altered as mutually agreed upon by the Client and CEI.

5. Schedule of Performance

The services of CEI are to commence as soon as practicable after the execution of the Agreement. The services shall be undertaken in accordance with the Scope of Work.

If, however, without fault of CEI, the performance of all or any part of the work is suspended, delayed or interrupted by an act of the Client, by the Client's failure to act within a time specified or by any occurrence beyond CEI's control, then an equitable adjustment will be made by the Client.

6. Personnel

CEI represents that in the performance of its obligations hereunder, it will perform in accordance with generally accepted engineering practices. CEI shall provide the Client with the names and contact numbers of the Principal-in-Charge, Project Manager, and Subcontractor Point of Contact (POC). Client will provide CEI with a single POC. Changes to either the Client's POC, CEI's main POC, or Subcontractor POS shall be communicated to the other as soon as possible but not to exceed 10 business days.

7. Hazardous Materials and Geotechnical Conditions

The Client acknowledges that the services may entail risk of personal injury and property damage (including cross contamination) that cannot be avoided, even with the exercise of due care. The Client also acknowledges that the environmental and geotechnical conditions can vary from those encountered at the times and locations of explorations and data collection, and that the limitation on available data may result in some level of uncertainty with respect to the interpretation of these conditions, despite due professional care. CEI, therefore, cannot guarantee specific results such as the identification of all contamination or other geotechnical or environmental conditions or problems and their resolution.

8. Utility Clearance

The Client will provide CEI information that identifies the location of buried utilities in the areas of the project. CEI will direct or specify that reasonable precautions be taken during field explorations or construction to avoid any damage to the utilities noted. However, the Client agrees to defend, indemnify, and save CEI harmless from any claim or damage in the event of damage or injury arising from damage or interference with subterranean structures or utilities

**Standard Terms and Conditions for Engineering and Consulting
COMPREHENSIVE ENVIRONMENTAL INC.**

which result from inaccuracies or omissions in plans or directions which have been furnished to CEI by others.

9. Documents and Information

All documents, data, calculations and work papers prepared or furnished by CEI are instruments of service and will remain CEI's property. Designs, reports, data and other work product delivery to Client are for Client use only, for the limited purposes disclosed to CEI. Any delayed use, use at another site, use on another project, or use by a third party will be at the user's sole risk, and Client agrees to indemnify and defend CEI against any liabilities resulting therefrom.

10. Responsibilities of the Client

The Client will designate an authorized representative to act as contact. The Client agrees to perform the following services in support of and as complementary to the undertakings of the CEI:

- A. Provide all available information as to the requirements of the Project.
- B. Place at CEI and Subcontractor disposal all available information pertinent to the Project, including previous reports and other relevant data.
- C. Furnish to CEI and Subcontractor existing available data prepared by others for the Client, if any, such as information related to hazardous materials or other environmental or geotechnical conditions at the sites, information and/or plans related to underground services, conduits, pipes, tanks and other facilities and obstructions at the sites, property boundaries, easement, right-of-way, topographic and utility surveys and property descriptions, zoning and deed restrictions and other special data. CEI is entitled to reasonably rely on this information and documentation.
- D. The Client agrees to furnish CEI with the right-of-entry on the land or represents and warrants, if the site is not owned by the Client, that permission has been granted to make site reconnaissance, survey, borings, and other exploration pursuant to the Scope of Services. CEI will take reasonable precautions to minimize damage to the land from use of equipment but has not included in the fee the cost for restoration of any resulting damage.
- E. Furnish CEI and Subcontractor in a timely manner with copies of pertinent correspondence relating to the Project.

11. Site Restoration

Although CEI will act to limit damage to landscaping, paving, systems and structures at the site, Client acknowledges that some damage may occur even with the exercise of due care, and Client agrees to compensate CEI for any restoration it is asked to perform unless otherwise indicated in the proposed Scope of Work.

12. Lab Tests and Samples

CEI is entitled to rely on the results of laboratory tests using generally accepted methodologies. CEI may dispose of samples in accordance with applicable laws 30 days after submitting test results to Client unless Client requests in writing for them to be held longer or to be returned to Client, in which case Client will compensate CEI for storage beyond 30 days and/or shipping. Should any of these samples be found to be contaminated by hazardous substances or suspected hazardous substances, it is the Client's responsibility to arrange and pay for lawful disposal.

13. Limits on CEI's Responsibility

CEI will not be responsible for the acts or omissions of Contractors, Subcontractors or others at the site, except for its own employees. CEI will not supervise, direct or have control over or the authority to stop any Contractor or Subcontractor work, nor shall CEI's professional activities nor the presence of CEI or its employees be construed to imply that CEI has authority over or responsibility for the means, methods, techniques, sequences or procedures of construction, for work site health or safety precautions or programs, or for any failure of Contractors or Subcontractors to comply with contracts, plans, specifications or laws. Any opinions by CEI of probable costs of labor, materials, equipment or services to be furnished by others are strictly estimates and are not a guaranty that actual costs will be consistent with the estimates.

14. Confidentiality: Subpoenas

Information about this Agreement and CEI's services, and information Client provides to CEI regarding Client business and the site, will be maintained in confidence and will not be disclosed to others without Client consent, except as CEI reasonably believes is necessary (a) to perform its services, (b) to comply with professional standards to protect public health, safety and the environment, and (c) to comply with laws and court orders. CEI will make reasonable efforts to give Client prior notice of any disclosure under (b) or (c) above. Information available to the public and information acquired from third parties without a breach of duty will not be considered confidential. Client will reimburse CEI for responding

Standard Terms and Conditions for Engineering and Consulting COMPREHENSIVE ENVIRONMENTAL INC.

to any subpoena or governmental inquiry or audit related to the services, at CEI's standard rates then in effect.

15. Insurance

During performance of the services, CEI will maintain workers compensation, commercial general liability, automobile liability, professional liability, and CEI's environmental liability insurance in the following minimum amounts:

- (a) Workers Compensation – Statutory
- (b) General Liability – \$2,000,000 aggregate, \$1,000,000 per occurrence
- (c) Automobile Liability – \$1,000,000 per occurrence and aggregate
- (d) CEI's Environmental Liability (Professional Errors and Omissions and CEI's Pollution Liability) – \$2,000,000 aggregate, \$1,000,000 per occurrence.

CEI will furnish certificates of such insurance upon request. CEI will purchase project specific insurance at Client request provided it is commercially available and Client pays the premium.

16. Risk Allocation

Client agrees to hold harmless, indemnify, and defend CEI and its affiliates and Subcontractors and their employees, officers, directors and agents against all claims, suits, fines and penalties, including mandated cleanup costs, attorneys' fees and other costs of settlement and defense, which claims, suits, fines, penalties or costs arise out of or are related to this Agreement or the services, except to the extent they are caused by CEI or Subcontractor negligence or willful misconduct.

To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the aggregate liability of CEI and its affiliates and Subcontractors and their employees, officers, directors and agents (collectively referred to in this paragraph as "CEI") for all claims arising out of this Agreement or the services is limited to \$50,000 or, if greater, the compensation received by CEI under this Agreement.

This limitation of liability applies to all injuries, damages, claims, losses, expenses and defense costs, whether based in contract, negligence, strict liability, statutory, warranty, trespass, indemnity, misrepresentation or any other theory of liability, except intentional misconduct, collectively hereinafter "Claim". Any claim will be deemed waived unless received by CEI within three years of substantial completion of the services or, if shorter, the applicable statute of limitations period. CEI will not be liable for

lost profits, loss of use of property, delays, or other special, indirect, incidental, consequential, punitive, exemplary, or multiple damages. CEI will not be liable to Client or the site owner for injuries or deaths suffered by CEI's or its Subcontractors' employees.

17. Disputes

All disputes between Client and CEI shall be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated within forty-five (45) days of service of notice. The mediation shall be administered by the American Arbitration Association in accordance with their most recent Construction Mediation Rules, or by such other person or organization as the parties may agree upon. No action or suit may be commenced unless mediation has occurred but did not resolve the dispute, or unless a statute of limitation period would expire if suit were not filed prior to such forty-five (45) days after service of notice.

18. Severability

If any portion of these "Standard Conditions for Engagement" or of the Proposal for Services for this project shall for any reason be deemed invalid or unenforceable, such a determination shall not affect the other provisions of the Proposal of these Standard Conditions shall be construed in all respects as though such invalid or unenforceable provision or provisions were omitted.

19. Miscellaneous

This Agreement shall be governed by Massachusetts law. The above terms and conditions regarding Limitation of Liability and Indemnification shall survive the completion of the services under this Agreement and the termination of the contract for any cause. Any amendment to this Agreement must be in writing and signed by both parties. This Agreement supersedes any contract terms, purchase orders or other documents issued by Client. These Terms and Conditions shall govern over any inconsistent terms in the Scope of work. If these Terms and Conditions have been provided to Client, Client verbal authorization to commence services constitutes Client acceptance of them. The provisions of this Agreement are severable; if any provision is unenforceable it shall be appropriately limited and given effect to the extent it is enforceable. Headings in these Terms and Conditions are for convenience only and do not form a part of the agreement. Nothing in this Agreement shall be construed to give any rights or benefits to third parties. CEI is an Equal Opportunity/Affirmative Action Employer.