

**Scott Dzurka**  
*Mayor*

**Brad Gurski**  
*Vice Mayor*

**Eric Hufnagel**  
*Commissioner*

**Chris Hyzer**  
*Commissioner*

**Chris DeLiso**  
*Commissioner*



**Chad A. Gamble, P.E.**  
*City Manager*

**Mindy J. Seavey**  
*City Clerk*

**Kristina Kinde**  
*City Treasurer*

**Michael Homier**  
*City Attorney*

**Justin Smith**  
*Director of Public Services*

**CITY OF ST. JOHNS  
CITY COMMISSION MEETING  
PROPOSED AGENDA**

**Monday, March 11, 2025, 5:30 p.m.  
Room 2200 – Clinton County Courthouse**

**\*Listen to Meeting Via Telephonic Conference  
Dial 1 929 205 6099**

**<https://zoom.us/j/2050014286>**

**Meeting ID: 205 001 4286**

**\*Please note, you will not be able to make public comments through Zoom;  
only in-person attendees will be able to participate in public comments.**

**(Times for agenda items are estimated times)**

**1. Call to Order (5:30 pm – 5:32 pm)**

**2. Pledge of Allegiance (5:32 pm – 5:33 pm)**

**3. Consent Agenda (*Action Item*) (5:33 pm – 5:35 pm)**

***The staff proposes the following items for the Consent Agenda. If any Commissioner wishes to discuss any of these items, it should be placed on the regular agenda. The remaining items and recommendations may be approved en masse:***

**a. Lease Agreement Regarding Rental of City Owned Land for Farming**

**-Staff recommends that the city commission approve the Lease Agreement Regarding Rental of City Owned Land for Farming with J.A. Smith Farm, LLC, for a 5-year term, commencing on January 1, 2025 and terminating on December 31, 2029.**

**b. Senior Citizen Park Design**

**-Staff recommends that the city commission approve the Wade Trim Proposal/Contract of \$3,400 and authorizes the Mayor to sign the contract.**

**4. Approval of Agenda (5:35 pm – 5:36 pm)**

**5. Welcome, Meeting Overview (5:36 pm – 5:40 pm)**

***(Presenter: Chad A. Gamble, P.E., City Manager)***

- 6. Presentation Regarding Governance and Intermunicipal Contract Agreement (5:40 pm – 6:40 pm)**  
*(Presenter: Andy Campbell, Bendzinski & Co.)*
- 7. Wrap Up and Next Steps (6:40 pm – 6:55 pm)**  
*(Presenter: Chad A. Gamble, P.E., City Manager)*
- 8. Public Comments (6:55 pm – 6:58 pm)**
- 9. Adjournment (6:58 pm)**

NOTICE: People with disabilities needing accommodation for effective participation in this meeting should contact the city clerk 989-224-8944 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodation.

**CITY OF ST. JOHNS, MICHIGAN  
REQUEST FOR COMMISSION ACTION  
March 11, 2025**

<b>Department: Administration</b>	<b>Attachments:</b>	<b>Submitted to CA for Review</b>
<b>Subject: <i>Lease Agreement Regarding Rental of City Owned Land for Farming</i></b>	<b>[ X ] <i>Lease Agreement</i></b>	<b>[X ]</b>
<b>Prepared by: Kristina Kinde, Treasurer Deputy City Manager</b>	<b>Approved by: Chad A. Gamble, P.E., City Manager</b>	

**SUMMARY/HIGHLIGHT:** This agreement is for the leasing of City owned property on Townsend Road for farming. The lease is for 23.82 acres of land, situated on Townsend Rd next to the St. Johns Offroad Park. The agreement is for a \$500 per year lease. The lessee will work with local Future Farmers of America (“FFA”) programs in concert with the St. Johns High School and thus has the ability to sublease the leased land to an entity that runs an FFA program or project.

**BACKGROUND/DISCUSSION:** Jessica Chant Smith has leased this property for over five years from the City. She is a member of the current lessee J.A. Smith Farm, LLC. This property being subleased to an entity that runs an FFA program was discussed at our joint meeting the St. Johns Public Schools on January 13, 2025. J.A. Smith Farm, LLC is working with the St. Johns Public Schools to establish their new FFA program.

**STRATEGIC PLAN OBJECTIVE:** N/A

**FISCAL IMPACT:** This revenue will be budgeted in the 25/26 – 29/30 fiscal years.

**RECOMMENDATION:** Staff recommends the City Commission approve the Lease Agreement Regarding Rental of City Owned Land for Farming with J.A. Smith Farm, LLC, for a 5 year term, commencing on January 1, 2025 and terminating on December 31, 2029.

## CITY OF ST. JOHNS

### AGREEMENT REGARDING RENTAL OF CITY-OWNED LAND FOR FARMING

#### RECITALS

This agreement regarding rental of city-owned land for farming (this “Lease”) is between the **City of St. Johns**, of 100 E. State Street, Suite 1100, PO Box 477, St. Johns, MI 48879 ( “Lessor”) and **J.A. Smith Farm, LLC**, a Michigan limited liability corporation, of 2212 N Dewitt Road, St. Johns, MI 48879 (“Lessee”).

The City owns land at various locations now vacant and suitable for farming. The City Commission believes it is in the best interests of its residents to offer the land for lease to farm as it yields a return on investment. The parties agree:

#### AGREEMENT

1. Lessor leases **23.82** acres of land to Lessee, situated at the location(s) as shown in the attached Exhibit **Farm 10418/Tract 15294/Sub-tract 16 & 18** (the “Leased Land”).
2. This Lease has a five (5) year term and commences on January 1, 2025 and terminates on December 31, 2029 (the “Term”). This Lease does not have an automatic renewal provision.
3. The rental rate for this Lease is **\$500.00** per year. Rent will be paid in full by cash or certified funds to Lessor at the above address no later than December 1<sup>st</sup> of every year of the Term.
4. Lessee must farm the land in accordance with good agricultural practices. Lessee will not use the land in a way that is inconsistent with the production of agricultural products. Lessee’s activities are limited on the Leased Land to crop farming and those operations supporting crop farming.
5. Lessee must comply with all local ordinances as well as all applicable laws, rules, ordinances and regulations in any and all activities, to include adherence to all relevant labor laws, with respect to the Leased Land.
6. Lessee will defend, indemnify and hold harmless Lessor and its commissioners, employees, officers and agents from all claims, liabilities, losses and/or damages of any kind whatsoever arising out of Lessee’s use of or operations on the Leased Land.
7. Lessee shall maintain adequate and appropriate insurance during the Lease Term to include comprehensive general liability insurance coverage for bodily injury and property damage, and any other insurance requested by Lessor, with policy amounts, types and coverages as reasonably required by Lessor. Lessor and its commissioners, officers, employees and agents must be listed as additional named insureds on all policies of insurance, and proof of insurance provided to Lessor on request of Lessor. All insurance must provide that notice of cancellation of the policy will be provided to Lessor at least thirty (30) days (ten (10) days for nonpayment of premium) prior to the effective date of the cancellation.

8. In the event of a breach by either party, notification of the breach must be in writing, delivered to the address of the party indicated in this Lease. The parties will use non-binding mediation as a first step in resolving any alleged breach of this Lease if the dispute cannot be resolved through informal negotiations. Any lawsuit involving this Lease will have as the appropriate venue Clinton County.
  
9. Lessee is not permitted to use animal manure on the Leased Land because of noxious odors potentially affecting nearby property owners and businesses. This requirement can only be waived by Lessor through a signed writing approved by Lessor.
  
10. Lessee will work with local Future Farmers of America (“FFA”) programs and projects. Lessee may sublease the Leased Land to an entity that runs an FFA program or project on the Leased Land. If Lessee ceases to work with FFA programs and projects or if Lessor desires to develop or sell all or any part of the Leased Land, Lessor may terminate the Lease by providing Lessee a minimum ninety (90) day written notice of Lessor’s intention to terminate. Lessor will then be required to compensate Lessee for any lost revenues to the extent the termination of this Lease affects crop production and/or harvesting. Lessor will make all reasonable efforts not to interfere with crop production/yield if this provision becomes operative.
  
11. This Lease may be executed in counterparts, which together constitute one agreement. An electronic or facsimile signature on this Lease has the effect of an original signature.

LESSOR:  
City of St. Johns

By: \_\_\_\_\_  
Printed Name: Scott Dzurka  
Its: Mayor

Date: \_\_\_\_\_, 2025

LESSEE:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2025

By: \_\_\_\_\_  
Printed Name: Mindy J. Seavey  
Its: City Clerk

Date: \_\_\_\_\_, 2025

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**March 11, 2025**

<b>Department: Parks and Recreation</b>	<b>Attachments: Design Proposal</b>	<b>Submitted to CA for Review</b>
<b>Subject: Senior Citizen Park Design</b>	[ X ] <i>Wade Trim Senior Park Design</i> [ ]	[ X ] [ ]
<b>Prepared by: Bill Schafer Parks and Recreation Director</b>	<b>Approved by: Chad A. Gamble, P.E., City Manager</b>	

**SUMMARY/HIGHLIGHT:**

The Parks and Recreation Department is preparing a grant application for the renovation of Senior Citizen Park that we hope to submit to the Michigan Department of Natural Resources (DNR) by April 1. Staff will present the formal grant application for approval at the March 24, 2025 regular Commission meeting. The DNR application requires a conceptual drawing and cost estimate. The proposal from Wade Trim includes drafting a conceptual site plan reflecting a design developed by the City of St. Johns staff and supported by the Parks and Recreation Board. Wade Trim will create a to-scale conceptual site design annotated for grant applications and other uses.

**BACKGROUND/DISCUSSION:**

Senior Citizen Park is one of five neighborhood parks owned by the City, located on a 2.58-acre parcel across from the water plant. The park currently features two non-functional tennis courts, a pavilion, glider swings, open space, and City water well #2. In 1978, the City received a \$25,500 Land and Water Conservation Fund grant for the installation of two tennis courts and a shuffleboard area. The courts were resurfaced in 2014, incorporating pickleball lines, with the work including crack filling and new surfacing.

The Parks and Recreation Board has conducted a review of all City parks as part of the Parks and Recreation Five-Year Master Plan. This review highlighted parks and appurtenances that were in need of upgrading/expanding/re-envisioning. The proposed improvements are in keeping with the feedback and requests received for additional park offerings appropriate for this park.

These proposed improvements will incorporate existing site features, such as the pavilion and trees, as well as additional enhancements, including:

- A parking lot near the existing sport courts
- Redesign and striping of the tennis courts for conversion to pickleball/multi-use courts
- Replacement of existing swings
- Installation of a concrete sidewalk along N. Ottawa Street, connecting existing and proposed elements

The City will also issue a survey to confirm and clarify the recreational offerings proposed in this park as well as other master plan ideas that were recently discussed by the Park Board.

**STRATEGIC PLAN OBJECTIVE:**

Investing in and maintaining City parks is a key component of the Strategic Plan. This initiative aligns with Parks and Recreation Master Plan Goal #1 and Goal #4:

- **Goal 1:** Provide safe, inclusive, community-based recreational opportunities that enhance the quality of life for all St. Johns-area residents.

- Continue to improve and upgrade recreational and support facilities based on community feedback.
- Increase and improve access to the City Parks and Trails System.
- Expand passive and active programming in line with community needs and available funding.
- **Goal 4:** Enhance neighborhood quality through well-maintained and accessible neighborhood parks.
  - Upgrade playground equipment and access, ensuring universal accessibility.
  - Maintain safe and well-kept park facilities as a visible indicator of community pride.

**FISCAL IMPACT:**

Funding for the requested \$3,400 design work will be allocated from Account 101-901-970.004 (Capital Outlay – Recreation and Culture).

**RECOMMENDATION:**

Staff recommends that the City Commission approve the Wade Trim Proposal/Contract of \$3,400 and authorizes the Mayor to sign the contract.



Wade Trim Associates, Inc.  
500 Griswold Street, Suite 2500 • Detroit, MI 48226  
313.961.3650 • www.wadetrim.com

January 29, 2025

City of St. Johns  
100 E. State Street, Suite 100  
St. Johns, MI 48897

Attention: Bill Schafer  
Recreation Director

Re: Proposal for Professional Landscape Architectural Services  
Senior Citizen Park Conceptual Design

Dear Bill:

We are pleased to present this proposal for professional landscape architectural and illustration services for Senior Citizen Park for the City of St. John's Recreation Department. The following proposal outlines our proposed scope of services and cost to provide these services.

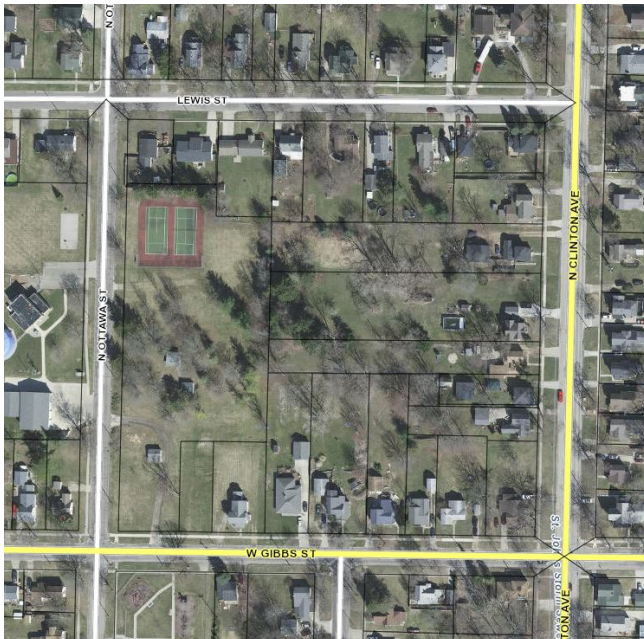
**SCOPE OF SERVICES**

Wade Trim will complete the following items as part of this project:

*Task #1 – Project Background & Data Collection*

This task and overall project will begin with a remote kickoff meeting with the City of St. Johns staff and Wade Trim team to review and affirm project goals and objectives. Following this meeting, our team will locate high-quality aerial image(s) of Senior Citizen Park, which is depicted in Exhibit A of this document, and input into CAD to provide a foundation for project drawings. This imagery will be geolocated and scaled as needed, then existing park features proposed to remain will be traced to develop a comprehensive project base map.

**Exhibit A:**





Task #2 – Proposed Design Illustrative Graphic

This task will include drafting a conceptual site plan to depict the proposed design for Senior Citizen Park that has been developed by City of St. Johns staff. It is our understanding that this design will include existing site features such as the site’s pavilion and trees as well as proposed site features such as a parking lot near the existing sport courts; redesign and restriping of the existing tennis courts to be converted to pickleball courts; replacements of existing swings; and concrete sidewalk along N. Ottawa Street and connecting existing and proposed site elements. This proposed site layout will incorporate known best practices for sport court design and layout and include recommended buffering. The Wade Trim team will use the proposed layout to create a to-scale illustration of conceptual site design annotated for use in grant applications and otherwise as-needed. This task includes one draft submittal of preliminary line drawing for review and comment by city staff prior to illustration as well as one review of draft illustration prior to final product completion.

**EXCLUSIONS**

- Changes in the Scope of Services
- Easement preparation of new or proposed easements
- Topographic survey, Certified Boundary Survey, or ALTA Survey
- Construction documents
- Specifications
- Geotechnical investigations
- Environmental Assessments, wetland delineation, permitting or mitigation
- Construction engineering
- As-built documentation
- Irrigation design
- Permitting

**SCHEDULE**

We are prepared to start the project within two weeks of receiving the executed contract returned. Our team understands the projected project timeline requires the completed final graphic will be available well ahead of the April 1, 2025, deadline for grant materials submission for the Michigan Recreation Passport grant program. It is estimated that a final graphic will be completed with 4 weeks of beginning the project.

**FEE SUMMARY**

We are prepared to complete the above-described tasks as authorized by the City of St. Johns for an estimated Fee of **\$3,400**. An approximate breakdown of the hours and fee per task is shown below:

Task	Description	Lump Sum Amount*
1.0	Project Background & Data Collection	\$900
2.0	Proposed Design Illustrative Graphic	\$2,500
<b>Total Fee</b>		<b>\$3,400</b>

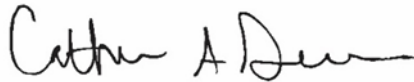
**ADDITIONAL SERVICES**

As always, our team's actual effort will be billed monthly in accordance with the actual hours worked and our current 2025 Rate Schedule. If extra work is required beyond the anticipated scope of this proposal, we will notify the Director immediately and provide an estimate for any additional work at that time.

Please find enclosed a Short Form Professional Services Agreement. If this proposal meets with your approval, please sign, date, and return a copy of the executed Agreement to our office. Our receipt of the executed Agreement will serve as our authorization to proceed. Please contact us directly with any questions you may have at any time. We appreciate the opportunity to help the City of St. Johns and look forward to working with your team on this project.

Very truly yours,

Wade Trim, Inc.



Catherine A. Dennis  
Project Manager



Scot A. Lautzenheiser, PLA  
Vice President, Area Lead

CAD:SAL:lkf  
AAA 8140-25  
20250129\_Schafer-Ltr.docx  
Enclosure



Agreement

To engage the Services of Wade Trim Associates, Inc., as a Design, Planning, Testing and/or Land Survey Professional.

This Agreement, entitled Proposal for Professional Landscape Architectural Services, Senior Citizen Park Conceptual Design between City of St. Johns of 100 E. State Street, Suite 100, St. Johns, MI 48897, hereinafter called "Owner," and Wade Trim Associates, Inc., 500 Griswold Street, Suite 2500, Detroit, MI 48226, hereinafter called "Professional," is as follows:

The Owner and Professional, for mutual consideration hereinafter set forth, agree as follows:

A. Professional agrees to perform certain professional services for Owner as follows:

As outlined in Wade Trim's proposal letter dated January 29, 2025.

B. Owner agrees to pay Professional as compensation for Professional's services as follows:

Estimated Fee of \$3,400.

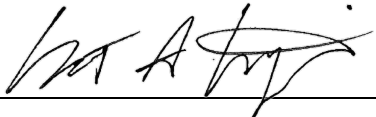
C. Owner agrees to establish an allowance of \$n/a for additional services on this Project (not less than 10% of the compensation amount specified in Item B.)

D. The Owner and Professional agree to conditions as set forth on the reverse side in the General Provisions of this Agreement.

E. The Owner and Professional agree to the following schedule:

As outlined in Wade Trim's proposal letter dated January 29, 2025.

F. Professional has the option to render this Agreement null and void, if it is not executed within 60 days.

Owner:	Professional:
_____	_____ 
By:	By: Scot A. Lautzenheiser, PLA, ASLA
_____	_____
(Print Name)	(Print Name)
Title:	Title: Vice President
_____	_____
Date Signed:	Date Signed: January 29, 2025
_____	_____

## General Provisions

### 1.01 Basic Agreement

A. Professional shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Professional for such Services as set forth herein.

#### 2.01 Payment Procedures

A. *Preparation of Invoices.* Professional will prepare a monthly invoice in accordance with Professional's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Professional for services and expenses within 30 days after receipt of Professional's invoice, the amounts due Professional will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Professional may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Professional has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

#### 3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Professional shall furnish services in addition to those set forth above.

B. Owner shall pay Professional for such additional services as follows: For additional services of Professional's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Professional's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Professional's consultants' charges with a 15% mark-up, if any.

#### 4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Professional:

1) upon seven days written notice if Professional believes that Professional is being requested by Owner to furnish or perform services which are outside of the agreed upon scope of services without compensation, which are contrary to Professional's responsibilities as a licensed professional; or

2) upon seven days written notice if the Professional's services for the Project are delayed or suspended for more than 90 days for reasons beyond Professional's control.

3) Professional shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Professional.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Professional to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Professional shall be compensated for Basic Services performed through the date of termination as set forth herein and for work performed per 4.01.B in the manner set forth in 3.01.

#### 5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

#### 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Professional each is hereby bound and the partners, successors, executors, administrators, employees and legal representatives of Owner and Professional (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Professional) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Professional may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

### 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Professional under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Professional makes no warranties, express or implied, under this Agreement or otherwise, in connection with Professional's services. Professional and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers and Professional shall not be responsible for design services provided by others.

B. Professional shall not at any time supervise, direct, or have control over any contractor's work, nor shall Professional have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Professional neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Professional shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Professional's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Professional.

E. The provisions in this Agreement supersede and render null and void any contrary provisions in the contract documents between Owner and Contractor.

F. All design documents prepared or furnished by Professional are instruments of service, and Professional retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Professional (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Professional's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Professional, whichever is less.

H. The parties acknowledge that Professional's scope of services does not include any services related to a Hazardous Environmental Condition (including but not limited to the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Professional or any other party encounters a Hazardous Environmental Condition, Professional may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

#### 8.01 Dispute Resolution

Except for debt collection cases for less than \$25,000, and except as otherwise provided herein, all claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event may the demand for arbitration be made after the expiration of one year from the date the cause of action accrued. The cause of action whether based in tort, contract, indemnity, contribution, or any other form of action, legal or equitable, shall be deemed to have accrued at the time the party asserting the claim either knew or, by the exercise of reasonable diligence, should have known of the existence of the facts underlying such claim, dispute or other matter in question regardless of when damages occur. After the expiration of said one year, any claim between the parties hereto shall be barred. No arbitration arising out of, or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Agreement.

The award rendered by the arbitrators will be final, not subject to appeal and judgment may be entered upon it in any court having jurisdiction thereof.

#### 9.01 Total Agreement

A. This Agreement (together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Professional, supersedes all prior written or oral understandings, and becomes binding as if fully executed at the time Professional commences work. To the extent that the terms of any appendices or documents referenced in this Agreement conflict with the terms of this Agreement, the terms of this Agreement shall govern. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.