

AMENDED ORDINANCE NO. 1 -04

By: Richard F. Weber

An Ordinance to authorize the Mayor and Auditor to execute an agreement with Myers Schmalenberger/MSi for planning, landscape architecture and urban design advisory services, and to declare an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the agreement with Myers Schmalenberger/MSi, substantially in the form attached to this Ordinance, is hereby approved and that the Mayor and Auditor are hereby authorized and directed to execute said agreement on behalf of the City.

Section 2. That this Ordinance is an emergency measure necessary for the immediate preservation of the public peace, health and safety, said emergency being the need for continued planning, landscape architecture and urban design advisory services at the earliest possible date, and shall take effect upon its passage and approval by the Mayor.

Passed: Feb 10, 2004

John B. Paly
President of Council

Attest: [Signature]
Clerk of Council

Approved: 2/10, 2004

[Signature]
David H. Madison, Mayor

*2/10/04 Amended Ordinance
Substituted @ 3rd Reading.
Passed.*

SERVICE AGREEMENT BETWEEN THE CITY OF BEXLEY AND MYERS SCHMALENBERGER/MSI

This agreement is entered into, by, and between the City of Bexley, Ohio and Myers Schmalenberger/MSI of Columbus, Ohio for planning, landscape architecture, and urban design advisory service.

Article I – Assumptions:

1. The Client will be the City of Bexley. The Consultant is to be Myers Schmalenberger/MSI; Keith Myers, Principal in Charge, Karen McCoy, Principal, and Chris Hermann, Project Manager.
2. Services shall be performed as requested by the Client. The primary Client contacts are the Director of Development and Director of Public Service.
3. The following Scope of Service is based upon MSI's understanding of service to be completed. Any additional services that may be required can be identified and additional fees can be authorized accordingly and will be based on MSI's standard hourly rate.

Article II – Scope of Service:

1. The Consultant will act as the primary planning consultant for the City Administration, City Council, Planning Commission, Main Street Redevelopment Commission, Board of Zoning Appeals, and Tree & Public Gardens Commission. The planning, landscape architecture and urban design advisory service to be performed includes:
 - Staff meetings with the administration, as directed by the Client.
 - Meetings with applicants and the administration to review proposed development applications.
 - Preparation of staff reports for the use of the Main Street Redevelopment Commission and Planning Commission in reviewing applications. Reports for the Board of Zoning Appeals and City Council will also be prepared at the request of the administration.
 - Presentations as requested by the Tree and Public Gardens Commission and authorized by the Client.
 - Attendance at all Main Street Redevelopment Commission, Planning Commission, and Tree & Public Garden Commission meetings.
 - Attendance at Council meetings as requested by the Client.
 - Attendance at Board of Zoning Appeals meetings as requested by the Client.
 - Preparation of written records of action recording the decisions made by these Boards and Commissions at attended meetings.
 - Special assignments as requested by the Client, particularly in the areas of planning, landscape architecture, and urban design advisory service.

Article III – Fee Proposal:

1. Professional Fees:

- a. MSI will provide the above services for the City of Bexley at a discounted hourly billing rate as follows:

Principal	\$100.00	Landscape Architect II	\$58.50
Senior Associate	\$81.00	Landscape Architect III	\$40.00
Associate	\$72.00	Graphic Designer	\$50.00
Planner	\$72.00	Administration	\$40.00
Landscape Architect I	\$67.50		

- b. MSI will invoice only for time spent on the above services and assignments authorized by the Client. The planning services proposed above assume an in-house review of complete applications (environmental review, rezonings, variances, etc.) including site visit, discussions with City staff and applicants, staff report, meeting presentation, and record of decision. The Consultant has found in the past that the annual fee budget for these services can vary greatly depending upon the number and complexity of the applications in a given year (the number of pending, complex development applications indicates that 2004 could be a busy year).

2. Direct Expenses/Reimbursable Expenses:

Direct expenses will be billed in addition to the fee for basic services and include actual out-of-pocket expenditures made in the interest of the above services. These might include:

- a. Requested plotted documents (excluding those for office/in-house use). Such printing services will be invoiced at the following rates:

30" x 42" Color Plot	\$50.00	30"x 42" B/W Copy-bond/vellum	\$4.00
24" x 36" Color Plot	\$35.00	24" x 36" B/W Copy-bond/vellum	\$3.00
18" x 24" Color Plot	\$20.00	11" x 17" Color Copy	\$2.00
B/W Plots 30" x 42"-bond/vellum	\$22.00	8 ½" x 11" Color Copy	\$1.00
B/W Plots 24" x 36"-bond/vellum	\$15.00		

- b. Reimbursable expenses such as mileage, out-of-office reprographic services (excluding those for office/in-house use), digital media, photographs, postage and handling of documents, courier services, etc. These reimbursable expenses will be invoiced at 1.2 times the actual amount.

3. Additional Services:

- a. Additional planning studies or other advisory services would be considered additional service. These may include area planning studies, design studies of public improvements, etc. Fees will be determined and approved by the Client at the time of request. Additional services, if requested, will be calculated at our standard hourly rate as listed above.

4. Payment due the Consultant and unpaid thirty (30) days from the date of invoice shall bear interest from the date payment is due at the rate of one percent (1%) per month (annual percentage rate of 12.0%) and shall be due the Consultant. The Consultant may discontinue work on the Project if the account is unpaid 30 days from the date of invoice.
5. If the Scope of Service or the Consultant's services are substantially revised, the estimate of total compensation shall be equitably adjusted.

Article IV – Miscellaneous Provisions:

1. This Agreement represents the entire and integrated agreement between the Client and the Consultant for the listed consultant planning services and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Client and Consultant.
2. The Client understands that there may be misinterpretations of the Consultant's design plans and specifications during implementation, which may lead to errors and subsequent damage. Inasmuch as the Client has elected to proceed with the Project without the Consultant providing review services, the Client agrees to indemnify and hold-harmless the Consultant against any and all claims, damages, awards and cost of defense, which may arise out of the acts of the contractor performing work not in compliance with the intent of the design documents.
3. The Consultant, upon delivery of documents, is completely absolved and indemnified from any liability that may result from the interpretation or revision of documents for which the Consultant was not responsible.
4. The Consultant has been commissioned by the Client to provide planning, landscape architecture and urban design advisory services which are independent of whether the Project for which they are provided is executed or not. The Client shall compensate the Consultant for services provided in accordance with the Project whether it is executed or not.

Article VI – Insurance

The Consultant shall comply with the laws of the State of Ohio relating to insurance coverage and shall carry during the performance of this contract and keep in full force, Worker's Compensation. A copy of a document evidencing such Worker's Compensation shall be furnished to the City.

The Consultant shall secure and maintain, at his own expense, errors and omissions insurance in an amount not less than One Million Dollars to protect against himself from

any claim arising out of the performance of planning, landscape architecture and urban design advisory services and caused by any errors, omissions or negligent acts for which the Consultant may be legally liable. The Consultant shall maintain said coverage for the entire contract period.

The Consultant shall secure and maintain, at his own expense, General Liability insurance in an amount not less than \$500,000.00 per occurrence.

The above-referenced insurance shall be maintained in full force and effect during the life of this agreement. Certificates showing that the consultant is carrying the above referenced insurance in at least the above specified amounts shall be furnished to, and approved by, the City prior to the start of service and before the City is obligated to make any payments to the Consultant for the services performed under the provisions of this contract.

All such certificates, with the exception of Errors and Omissions coverage, shall clearly reflect that the City of Bexley is an "Additional Insured."

The Consultant's required insurance shall be endorsed to provide that the policies will not be cancelled, reduced, discontinued, or otherwise materially altered during the period of performance without (30) days prior written notice to the City.

Article VII – Term of Agreement

This contract shall be for an initial term of one year ending December 31, 2004, and shall be automatically extended from year to year, unless amended or terminated by either party, with or without cause, at any time upon the giving of at least 90 days prior written notice of its election to terminate to the other party. In the event termination occurs, the Consultant agrees to complete the current assignment(s) and the City agrees to pay the Consultant for service performed in accordance with the terms of this Agreement through the cancellation date.

Thanks for the opportunity to work with you again.

Sincerely,

Keith A. Myers
Partner

Chris Hermann
Project Manager

City of Bexley, Ohio:



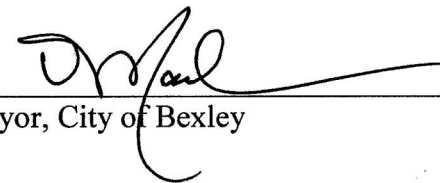
Development Director, City of Bexley

2/19/04
Date



Auditor, City of Bexley

2/18/04
Date



Mayor, City of Bexley

2/19/4
Date

MSI Terms and Conditions

DIRECT PROJECT EXPENSES Direct project expenses will be billed in addition to the fee for basic services and include actual out-of-pocket expenditures made in the interest of the Project. All direct project expenses will be invoiced at 1.2 times the actual amount. Direct project expenses include, but are not limited to mileage, film and processing, courier and overnight delivery services, travel, hotel, car rental, etc.

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

B/W Plots 24" x 36" – Bond/ Vellum	\$15	Color Plot 30" x 42"	\$50
B/W Plots 30" x 42" – Bond/ Vellum	\$22	Color Plot 24" x 36"	\$35
B/W Copy 24" x 36"– Bond/ Vellum	\$3	Color Plot 18" x 24"	\$20
B/W Copy 30" x 42"– Bond/ Vellum	\$4	Color Copy 8 ½ x 11"	\$1
		Color Copy 11" x 17"	\$2

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

Principal	\$100.00	Landscape Architect II	\$58.50
Senior Associate	\$81.00	Landscape Architect III	\$40.00
Senior Designer	\$72.00	Graphic Designer	\$50.00
Associate	\$72.00	Administration	\$40.00
Landscape Architect I	\$67.50		

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

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

SATISFACTION WITH SERVICES Payment of any invoice by the Client to the Consultant shall be taken to mean that the Client is satisfied with the Consultant's services to the date of payment and is not aware of any deficiencies in those services.

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

INTEREST If payment in full is not received by the consultant within forty-five (45) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent of the past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to unpaid principal.

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

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

TERMINATION OF AGREEMENT This agreement may be terminated by either party upon seven (7) days written notice with or without cause. In the event of termination not initiated by the Consultant, the Consultant shall be compensated for all services performed to the date of termination, together with direct project expenses then due.

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

subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

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

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

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

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

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

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

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

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

OPINIONS OF PROBABLE CONSTRUCTION COST In providing opinions of probable construction cost, the Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgement and experience. The Consultant makes no warranty, express or implied, that the bids or negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

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

MSI Terms and Conditions

INFORMATION PROVIDED BY OTHERS The Client shall furnish, at the Client's expense, all information requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

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

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

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

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and sub-consultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any reuse of the electronic files without the prior written consent of the Consultant.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

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

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

ASSIGNMENT Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to sub-consultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

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

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

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

BETTERMENT If, due to the Consultant's negligence, a required item or component of the Project is omitted from the Consultant's construction documents, the Consultant shall not be responsible for paying the actual construction cost required to add such item or component to the extent that such item or component would

have been required and included in the original construction documents. In no event will the Consultant be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

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

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.

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

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

CHANGED CONDITIONS If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for re-negotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating re-negotiation, and the Consultant and the Client shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

DEFINITION OF 'HAZARDOUS MATERIALS' As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

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

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

ACCOUNT #	DESCRIPTION	2004 BUDGET
01-170-51190	CONTRACTS	10,625
01-350-51190	CONTRACT-PROFESSIONAL	98,729
01-600-51190	TREE COMMISSION	13,757
01-170-51191	PUMP HOUSE PARK CONTRACT	235,000
01-600-51191	MAIN STREET REDEVELOPMENT	3,481
01-170-51192	MAIN STR M.	15,000
01-300-51192	GAS AND ELECT DEREG ORD 53-03	1,405
01-400-51192	LIFECARE ALLIANCE	0
01-600-51192	BZA	5,855
01-170-51193	PLANNING COMMISSION	2,040
01-600-51193	PLANNING COMMISSION	3,762
01-950-51193	POWELL AND GOULD CALMING	0
03-380-51193	MSI CONTRACT ORD 24-03	1,465
		<hr/> 391,118