

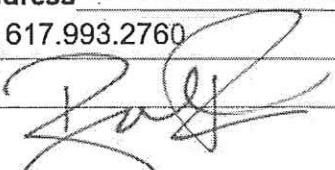
**Community Preservation Committee  
Town of Belmont**

**CPA Funding - Preliminary Application**

Ten copies of the completed Preliminary Application must be submitted to the following address by no later than 7:00 pm on Monday, October 2, 2023:

Community Preservation Committee  
c/o Matthew Haskell, CPA Administrator  
Office of the Select Board  
Belmont Town Hall  
455 Concord Avenue  
Belmont, MA 02478

*Unless an applicant can demonstrate that a significant opportunity would otherwise be lost, preliminary applications will not be accepted after the submission deadline.*

**Project Title** Chenery Park Design and Engineering  
**Project Location** Chenery School/Park  
**Applicant/Contact Person** Brandon Fitts, CTRS, CPRP  
**Organization** Belmont Recreation  
**Mailing Address** 19 Moore St. Belmont, MA 02478  
**Telephone** 617.993.2760 **E-mail** bfitts@belmont-ma.gov  
**Signature**  **Date** 10/2/2023

CPA Category (refer to chart on the following page and check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> Community Housing | <input type="checkbox"/> Historic Preservation |
| <input type="checkbox"/> Open Space        | <input checked="" type="checkbox"/> Recreation |

**Amount Requested** \$105,000

**Total Project Cost** \$105,000

Applicants will present their projects at the CPC Public Meeting on November 8, 2023 and address questions from Belmont residents. It is required that information about the project be in writing and copied for distribution and review at the Public Meeting. This is also an opportunity for project sponsors to ask the CPC any questions regarding the application process.

2023 OCT -2 PM 5:07

RECEIVED  
SELECT BOARD  
BELMONT, MA

Chart 1  
COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES (G.L. c. 44B, § 5)

DEFINITIONS (G.L. c. 44B, § 5)	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
	Land to protect existing and future wetlands, regulated land, riparian areas, watershed land, floodplain, forest land, and other water resources and other wetlands, ocean, river, stream, lake and pond fringing, beaches, dunes and other coastal lands, lands to protect scenic views, land for historic resource preservation and land for recreation use.	Building, structure, vessel, real property, document or artifact listed on the state register of historic places, or identified by the local historic commission to be significant in the history, archeology, architecture or culture of the city or town.	Land for active or passive recreational use including, but not limited to, the use of land for community gardens, trails and sports, and the use of land as a park, playground or athletic field. Does not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.	Housing for low and moderate income individuals and families, including low or moderate income seniors. Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income.
<b>ACQUISITION</b> Obtain property interest by gift, purchase, devise, grant, rental purchase, lease or otherwise. Only includes interest in land making so provided by G.L. c. 44B.	Yes	Yes	Yes	Yes
<b>CREATION</b> To bring into being or cause to exist. <i>Sinkhorn v. City of Boston, 123 Mass 472 (1869)</i>	Yes		Yes	Yes
<b>PRESERVATION</b> Protect personal or real property from injury, harm or destruction.	Yes	Yes	Yes	Yes
<b>SUPPORT</b> Provide grants, loans, rental assistance, security deposits, interest-free or low-interest loans or other financial assistance or other services or facilities that are eligible for community housing, or such housing, for the purpose of making housing affordable.				Yes, includes funding for community's affordable housing fund.
<b>REHABILITATION AND RESTORATION</b> Make capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties.	Yes if acquired or created with CIP funds.	Yes	Yes	Yes if acquired or created with CIP funds.

Source: Department of Revenue (DOR) 10-5-2012 conference, "Recent Developments in Municipal Law," Workshop B - Local Finances

**Brief Description of Project**

Include the address/location and current owner of the property, as well as any critical dates. Please attach supplemental information (photographs, drawings, documents, etc.) as desired

The Chenery Park complex is in need of reconstruction. In consideration of the various grade shifting being done within the school department, at the end of the school renovations, Chenery will service grade 4, 5, and 6. The playground as it stands now is weathered. The tennis courts have been home to modular units for the previous few years. The softball fields are worn down the over all grass conditions aren't ideal. Since this project will need to adopt a collaborative approach between the town, schools, and abutters, we are looking to do a study with Activitas to determine the best plan for this park design. This will involve public meetings, discussions, and more to determine what to do and how to redesign the space. This is phase 1 of the CPC's park's project plan.

**Brief Description of Benefit**

How does the project fulfill the General and Specific Criteria of the Community Preservation Committee Guidelines?

This study will provide great benefit to the entire town as we evaluate what to do with this critical park resource. Considering the grades at Chenery and the re-branding of the school as a 4th-6th grade educational facility, this project will compliment the schools nicely. Overall, this study will engage residents in the public process and help keep any decisions transparent and collaborative.

FEE PROPOSAL FOR PARK DESIGN SERVICES  
AT CHENERY MIDDLE SCHOOL IN BELMONT, MA

2 MARCH 2023  
REVISED 6 MARCH 2023

FOR:  
MR. BRANDON FITTS  
DIRECTOR  
BELMONT RECREATION DEPARTMENT

**BACKGROUND AND INTRODUCTION:**

Activitas Inc. (*the Consultant*) is pleased to provide the Town of Belmont Recreation Department (*the Client*) with this Proposal for professional Park Design Services for Chenery Middle School. The Project is anticipated to include renovations of Middle School to include (but not be limited to) the following:

- Playground renovations
- Basketball court renovations
- Tennis court renovations
- Softball field improvements
- Site and landscape improvements

**PROJECT EXPERTISE:**

- Patrick Maguire, RLA will serve as Principal-in-charge
- Megan Buczynski, PE will serve as Principal Civil Engineer
- Jonathan Charwick, RLA, Senior Associate will serve as Project Manager of the project.
- Olivia Messenger will serve as Landscape Designer for the project.

**SCOPE OF SERVICES:**

The Consultant will provide professional Master Planning Design Services as outlined below for the development of this Project. Services will include:

- Assistance to the Client with Project Programming
- Existing Conditions Survey
- Preparation of Master Plan Level Conceptual Design
- Preparation of Preliminary Opinions of Probable Construction Costs
- Preparation of Construction Drawings and Technical Specifications

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- Assistance During the Permitting Phase
- Assistance During Project Bidding
- Assistance During Construction
- Attendance at Client/Owner Meetings

## **PART I. BASIC SERVICES:**

### **A: TASK 1: CONCEPTUAL DESIGN**

#### Item 1.1 Program Verification Meeting

Activitas will organize a kick-off/programming meeting with the Town of Belmont Recreation Department, Department of Public Works and other stakeholders to review the scope of work for the project. The intent of the meeting will be to develop the project program, review the project scope of work, and confirm the schedule and deliverables for the project.

#### Item 1.2: Existing Conditions Survey and Plan

Activitas and our Design Team (specifically Reed Land Surveying) will conduct a topographic and utilities survey of the project area. This survey will illustrate all relevant existing conditions located within the project area. This task includes all field work and reproduction of the data onto plans in AutoCAD (dwg) format at a scale suitable for the development of the permitting drawings and construction documents and will serve as a basis for design and construction. The topographic survey will be performed to depict contours of the land at a 1' contour interval according to National Map Accuracy Standards. Surface evidence of existing utilities will be located and mapped. Any utility records that can be supplied by the Town of Belmont will be integrated into the mapping. An elevation will be established on site using the Town of Belmont preferred vertical datum and will be stamped by a Professional Land Surveyor licensed in the Commonwealth of Massachusetts.

A boundary retracement will also be included within the survey scope of work.

#### Item 1.3 Conceptual Design Options and Opinions of Probable Project Costs

Based upon the results of the program verification meeting, Activitas will prepare up to three (3) 2-dimensional Conceptual Design options that describe the proposed improvements.

Activitas will develop itemized Opinions of Probable Project Costs for each conceptual

Mr. Brandon Ellis, Director  
Town of Belmont Cheney Middle School

01/26/2017

design to be reviewed with the Town. The detailed document will include the anticipated costs for:

**Construction Costs**

- Demolition and Site Preparation
- Erosion and Sediment Control
- Earthwork and Drainage
- Utilities
- Materials and Installation – Playgrounds
- Materials and Installation – Basketball and Tennis Courts
- Materials and Installation – Natural Grass Field
- Materials and Installation – Fencing Improvements
- Site and Landscape Improvements Budget

**Contractor Costs**

- General Construction Conditions
- Bonds and Insurance
- Contractor's Overhead and Profit

**Design and Other Soft Costs**

- Anticipated Design and Bidding Fees
- Anticipated Construction Observation Fees
- Owner's Project Management Budget
- Suggested Construction Contingencies
- Materials Testing Budget

**Item 1.4 Community Meetings**

Activitas will prepare for and attend two (2) Community Meetings (in addition to the initial Programming Meeting) during this conceptual design phase. It is anticipated that these meetings will be held to review the proposed program and design plan options. Meeting minutes will be prepared and distributed after each meeting.

**Item 1.5 Final Conceptual Design and Opinion of Probable Project Costs**

Based upon the feedback received by the Town and their stakeholders during the community meetings, Activitas will develop a final conceptual design and opinion of probable project costs to be reviewed and approved by the Town of Belmont.

**Anticipated Task 1 Deliverables:**

Existing Conditions Survey, preparation of Conceptual Design Options, 2D Renderings, Preliminary Opinions of Probable Construction Costs and meeting notes.

**Anticipated Task 1 Meetings:**

Activitas anticipates attendance at two (2) project meetings with the Town and two (2) community meetings. Activitas will prepare necessary visuals, rendered site plans, and handouts (as required) for the proposed meeting along with meeting notes.

**B: TASK 2: CONSTRUCTION DOCUMENTS PHASE**

Following approval of the final conceptual design by the Town identified in Item 1.5 above, Activitas will commence the construction documents phase:

**Item 2.1: 60% Construction Documents**

Activitas will begin the preparation of construction drawings and specifications for a publicly bid project, setting forth in detail the requirements for construction of the proposed athletic field and parking improvements.

Activitas will prepare construction drawings and details that fix and describe the park in layout and materials and will address issues of drainage and site hydrology, site access, rehabilitation of existing conditions, conflicts with utilities, grade differentials, electrical supply and other issues as identified during the design process. Drawings will be prepared in AutoCAD format and are anticipated to include the following:

- Cover Sheet
- Existing Conditions Plan (Survey)
- Site Preparation Plan and Details
- Erosion Control Plan and Details
- Layout and Material Plan
- Grading and Utility Plan
- Planting Plan
- Landscape Details
- Irrigation Plan and Details (Add Alternate)

Activitas will also prepare draft Technical Specifications for public bidding. Specification sections are anticipated to include (but are not limited to) the following:

Division 03 00 00 – Concrete

Section 03 00 00

Cast-In-Place Concrete

Division 11 00 00 – Equipment

Section 11 68 00	Athletic Equipment
Section 11 68 16	Playground Equipment

Division 31 00 00 – Earthwork

Section 31 00 00	Site Preparation
Section 31 25 00	Erosion and Sediment Control

Division 32 00 00 – Exterior Improvements

Section 32 01 16.72	Asphalt Pavement Reuse
Section 32 12 16	Bituminous Concrete Pavement
Section 32 13 13	Cement Concrete Pavement
Section 32 18 23.13	Infield Mix
Section 32 18 23.26	Natural Grass Athletic Field
Section 32 18 23.53	Court Surfacing
Section 32 18 16	Recreation Surfacing
Section 32 31 13	Chain Link Fence and Gates
Section 32 92 19	Loam and Seed
Section 32 93 00	Planting

Division 33 00 00 – Utilities

Section 33 40 00	Storm Drainage
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Activitas and our Design Team will update the Opinion of Probable Costs as required during the preparation of Construction Documents. Copies of the revised Opinion of Probable Costs and Quantities will be provided to the Client for review and discussion at the Construction Document Phase meetings.

Item 2.2: Permitting Assistance

It is assumed that the proposed renovations will require a submission of a Stormwater Management and Erosion Control Report to the Town of Belmont. The report will also include an Operation and Maintenance Manual, a Sanitary Sewer and Storm Drain Connection Permit Application and site plans develop in Item 2.1 above. Activitas will prepare the application and associated materials and file with the Town of Belmont. It is assumed that this will be an administrative review and no public hearings are required. If attendance at meetings or hearings is requested and/or required, they will be billed as an Additional Service at the rates outlined in Part III of this Proposal.

Item 2.3: 90% Construction Documents



Based on the Client review of the 60% Construction Documents, Cost Opinion and Stormwater Management and Erosion Control Report, Activitas will make revisions to the plans and specifications as needed in order to prepare the 90% Construction Documents set. It is anticipated that the drawings and specifications will be as listed above in Item 1.2 with modest additions.

Activitas will incorporate and make necessary design revisions (to the extent possible) which accommodate the applicable comments, issues and concerns raised during Item 2.1 and 2.2. Preparation of 90% construction drawings and specifications for a publicly bid project. (MGL 30-39M) will commence. Documents will set forth in great detail the requirements for construction of the proposed park improvements.

Technical specifications will be finalized for public bid as part of this Task including the production of the Project Manual and associated Front End Matter.

Activitas will process all plans submitted by the Design Team through a detailed Quality Control/Quality Assurance (QA/QC) review procedure prior to finalizing the 90% Construction Documents for bidding. All plans will also be updated and revised, as required, based on comments received during the Construction Documents Review Meetings.

Activitas will update the Opinion of Probable Costs as required during the preparation of 90% Construction Documents. If add alternates are included in the Construction Documents, they will be itemized in this document. Please note that alternates must be accepted in order.

**Anticipated Task 2 Deliverables:**

60% Construction Documents, Stormwater Management and Erosion Control Report; 90% Construction Documents and Project Manual and meeting notes.

**Anticipated Task 2 Meetings:**

Activitas anticipates attendance up to three (3) project meetings with the Town. Activitas will prepare necessary visuals, rendered site plans, and handouts (as required) for the proposed meeting along with meeting notes.

**C. TASK 3: PROJECT BIDDING**

**Item 3.1: Bid Phase Services**

Activitas will update the 90% drawings and specifications and will develop 100% Construction Documents that will be used for Public Bidding.

Activitas will obtain all State Wage Rate information for the project as well as compile a Bid Advertisement for use in advertising the Bid in the Central Register and a local paper (to be coordinated with the Purchasing Department). Activitas will also assist the FC with advertising on COMMBUYS.

Activitas will distribute the 100% Construction Documents and Project Manual to bidders and maintain an up-to-date Bidder's List for the Project. At this time, it is assumed that all distribution will be electronic and that Bidders will be responsible for printing documents at their own expense.

Activitas will coordinate and attend the Pre-Bid Meeting and prepare and distribute meeting minutes to the prospective bidders.

Activitas and our subconsultants will prepare addenda information as required. It is assumed that no more than two (2) addendum will be required; provided, however, that if additional addenda are required to clarify or correct the Construction Documents, it will be provided as part of Basic Services at no additional cost.

Activitas will attend the bid opening and assist the Town with the breakdown of bids. Activitas will review the bids, call references and provide a written recommendation for the lowest responsible bidder meeting the qualifications outlined in the Project Manual.

#### **D: TASK 4: SERVICES DURING CONSTRUCTION**

##### Item 4.1: Construction Meetings and Site Visits

Activitas will coordinate, attend and oversee the Pre-Construction Meeting. Activitas will prepare meeting notes for distribution following the meeting.

Activitas will attend and lead weekly project meetings during the construction period. Activitas anticipates attending twelve (12) weekly construction meetings. Activitas will prepare and distribute meeting notes to the construction team. Our subconsultants will attend meetings as needed to coordinate their work on the project at appropriate times during construction.

Activitas and our subconsultants will also provide construction and quality control monitoring services on a limited basis, as described herein, during the anticipated construction period. It is anticipated that the Client's designated personnel will oversee daily construction and will assist in the monitoring of all deliveries and material export.

Depending upon the ultimate construction scope and the winning bidder, it is not anticipated that a continuous site presence will be required from Activitas or their subconsultants.

In conjunction with the weekly construction meetings it is anticipated that Activitas will make site visits to familiarize ourselves with the progress of the work. The site visits will be in conjunction with the following construction milestones:

- Site Preparation and Erosion Control Installation
- Earthwork Operations
- Playground Base Fine Grading
- Playground Installation
- Asphalt Paving
- Playground Surfacing Installation
- Retaining Wall Installation
- Irrigation System
- Finish Landscape Review

Field reports will be prepared and distributed as necessary.

#### Item 4.2: Office Administration

Activitas will provide assistance to the Client in the administration of the Construction Contract related to the scope of work described in this proposal, including review of contractor submittals, shop drawings, requests for information, schedule of values and applications for payment (if necessary), and the preparation of sketches and field reports related to the Athletic Field scope of work.

#### Item 4.3: Project Closeout

Activitas will prepare a final punch list and appropriate certifications of substantial and final completion for the scope of work described in this proposal. If time is required after the issuance of the monetized punch list, it will be billed as an Additional Service at the rates outlined in Part III of this Proposal.

### **E: REIMBURSABLE EXPENSES (ESTIMATED):**

In an effort to minimize the cost of the project, Reimbursable Expenses are not billed as a lump sum portion of the Basic Services, but include only actual expenditures such as, but not limited to, tolls, mileage at the current IRS rate, long distance telephone calls, reprographic services, postage, overnight delivery and travel and shall be invoiced at 1.15

- A. If the Client authorizes services which exceed those listed under the Basic Services and are not customarily furnished in accordance with accepted practice, they shall be compensated at the rates listed in the Compensation Section. Such additional expenses shall include, but not be limited to: 1) major revisions in documents and/or drawings due to causes beyond the control of the Consultant, including all changes to the design and drawings resulting from meetings with the Client, Municipal or State agencies and review boards, or revisions requested by the Client after approval of the Consultant's plans by the Client, and submission to the Municipality and/or State; 2) design of off-site improvements resulting from requests by the Client and/or requirements from jurisdictional authorities; 3) applications, printing and fees for local, state and federal permits other than those specifically listed in this Proposal; 4) attendance at meetings or hearings beyond those listed in the Basic Services; 5) hazardous site or building material evaluation or abatement design; 6) traffic engineering; 7) pile cap or spread footing sports light pole footing design; 9) architecture or MEP design for support buildings; 10) Design or application for LEED Certification; 11) structural engineering; 12) Clerk of the Works services; 13) as-built drawings (to be procured by the General Contractor and Subs).
- B. Rates for Additional Services will be furnished on an hourly basis at the following hourly rates:

MANAGING PRINCIPAL .....	300.00
DESIGN PRINCIPAL .....	235.00
PRINCIPAL CIVIL ENGINEER .....	235.00
PRINCIPAL LANDSCAPE ARCHITECT .....	235.00
SENIOR ASSOCIATE .....	175.00
ASSOCIATE .....	165.00
PROJECT MANAGER .....	125.00
CIVIL ENGINEER .....	125.00
CIVIL DESIGNER / E.I.T. ....	115.00
PROJECT LANDSCAPE ARCHITECT .....	115.00
STAFF LANDSCAPE ARCHITECT .....	110.00
DESIGNER .....	100.00
CLERICAL .....	70.00
INTERN .....	50.00

Rates and roles may be adjusted from time to time. Written notification will be provided to the Client prior to changes in billing structure.

- C. Rates for Additional Services by Sub-Consultants, when authorized by the Client, will be furnished at 1.12 times the cost of services rendered. See attached for Consultants' rates.

#### CLIENT AUTHORIZATION

The Client agrees with Parts I, II and III which includes the Scope of Services, Additional Services, and Compensation, and Part IV, Terms and Conditions of Agreement (attached hereto and acknowledged as being received). Together they constitute the entire agreement between the Consultant and the Client.

  
Jonathan Charwick  
Senior Associate | Activitas Inc.

\_\_\_\_\_  
Name

Date: 6 March 2023

\_\_\_\_\_  
Title  
Town of Belmont

Date: \_\_\_\_\_

#### PART IV:

### ACTIVITAS INC. TERMS AND CONDITIONS OF AGREEMENT (Page 1 of 4)

The engagement of Activitas Inc. (the Consultant) by the Client is under the following terms and conditions and is an integral part of the collective Agreement between the Client and the Consultant.

1. The fee estimate for the proposed Scope of Services is valid for 60 days from the date of Proposal.
2. Payment to the Consultant is the sole responsibility of signatory of this Agreement and is not subject to third party agreements.
3. All schedules set forth in the attached Scope of Services commence upon receipt of a signed Agreement and, if requested, a retainer. All retainer amounts will be applied to the last invoice. **A RETAINER OF \$0.00 IS REQUIRED BEFORE SERVICES CAN COMMENCE UNDER THE AGREEMENT.**
4. Requests for Additional Services and any associated fee adjustment must be authorized in writing before Additional Services can begin.
5. Invoices will be rendered monthly and become due upon receipt.
6. Invoice payments must be kept current for services to continue. If the Client fails to pay any invoice due to the Consultant within 30 days of the date of invoice, the Consultant may, without waiving any other claim or right against the Client, suspend services under this Agreement until the Consultant has been paid in full all amounts due the Consultant and/or any of its Consultants and Subcontractors. The balance on overdue invoices shall be subject to an interest charge of 1.5% per month or 18% per annum accruing from the due date of the invoice. Application of the percentage rate listed above as a consequence of late payment by the Client does not constitute any willingness on the Consultant's part to finance the Client's operation, and no such willingness should be inferred.
7. If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within fifteen (15) 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.
8. The Consultant agrees to carry the following insurance during the term of this Agreement:
  - Workmen's Compensation and Employer's Liability Insurance in compliance with statutory limits.
  - Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with combined single limits of \$500,000 per occurrence and in the aggregate.
  - Professional Liability Insurance with a limit of \$1,000,000 per claim and \$2,000,000 in the aggregate.
  - Automobile Liability Insurance including non-owned and hired automobiles with the following limits:

Bodily Injury	\$500,000 each person
	\$500,000 each occurrence
Property Damage	\$100,000 each occurrence

Certificates of insurance will be furnished upon request. If the Client requires additional insurance coverage, and it is available, the Client agrees to reimburse the Consultant for such additional expense.
9. The Consultant shall not be responsible for failure to perform or for delays in the performance of services which arise out of causes beyond the control and/or without the fault or negligence of the Consultant.
10. The Consultant's services will be performed on behalf of and solely for the benefit and exclusive use of the Client and Client's agents and designees for the limited purposes set forth in the Agreement. Client acknowledges that The Consultant's services require decisions which are not based upon science, but rather upon judgmental considerations.

11. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees and subconsultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages, including attorneys' 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 \$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.
12. The Client further agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and the Consultant's officers, directors, partners, employees and subconsultants to all construction contractors and subcontractors on the Project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant and the Consultant's subconsultants to all those named shall not exceed \$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.
13. In addition, and notwithstanding any other provisions of this Agreement, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this Project or the performance by any of the parties above named of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the negligent acts or negligent failure to act by the Consultant.
14. Per the Construction Observation section of Part I of this agreement the Consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and the Consultant, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Consultant, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, the Consultant shall keep the Client informed about the progress of the Work and shall endeavor to guard the Client against deficiencies in the Work. If the Client desires more extensive project observation or fulltime project representation, the Client shall request that such services be provided by the Consultant as Additional Services in accordance with the terms of this Agreement. The Consultant shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents. The Consultant shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.
15. The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing any such certification.
16. All documents including Drawings and Specifications prepared by the Consultant pursuant to the Agreement are instruments of service with respect to the Project. They are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse by the Client or a third person or entity authorized by the Client without written verification or adaptation by the Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to the Consultant; and the Client, shall release, indemnify and hold harmless the Consultant from all claims; damages; losses and expenses including attorneys' fees arising out of or resulting there from. Any such verification or adaptation will entitle the Consultant to additional compensation at rates to be agreed upon by the Consultant and the third person or entity seeking to reuse said documents.
17. In entering into this Agreement, Client has relied only upon the representations set forth in this Agreement. No verbal warranties, representations or statements shall be considered a part of this Agreement or a basis upon which the Client relied in entering into this Agreement. No statements, representations, warranties or understandings, unless contained herein, exist between Client and The Consultant.
18. The Consultant agrees to comply with all Federal Equal Opportunity laws, orders and regulations. Without limiting the generality of the foregoing, the Consultant will not discriminate against any employee or applicant for employment by the Consultant because of race, creed, color, age, sex, marital status, national origin or disability. In addition, the Consultant will not discriminate against any employee or applicant for employment by the Consultant because of sexual orientation. The Consultant will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, age, sex, marital status, special disabled veteran or Vietnam era veteran status, national origin, disability or sexual orientation. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertisement; (iii) layoff transfer; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Proposal for Design Services

1000 West 1st Street, Suite 200

1000 West 1st Street, Suite 200

1000 West 1st Street, Suite 200

1000 West 1st Street

19. The Client agrees to include Activitas Inc. as Consultant for the Project, in all construction signage identifying the project, and will make his best effort to include Activitas in appropriate press releases and promotional information.
20. The Consultant and their subconsultants shall be paid Additional Services for work related to disputes and questions arising out of the General Contractor and/or Subcontractors' disputes arising out of the Bidding and Construction process.
21. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to non-binding mediation unless the parties mutually agree otherwise. Disputes not settled by mediation shall be settled by a court of competent jurisdiction.
22. 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. In the event of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by arbitration, the term "prevailing party" shall be determined by that process.
23. 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 subconsultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.
24. In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay the Consultant for all services rendered not in dispute and all reimbursable costs not in dispute incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of the Consultant, the Client shall pay the Consultant, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

25. The Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (MAAB) regulations provide that it is a violation of these regulations to design and construct a facility that does not meet the accessibility and usability requirements of the ADA and MAAB unless it can demonstrate that it is structurally impractical to meet the requirements. The Client understands that the requirements of ADA and MAAB will be subject to various and possibly contradictory interpretations. The Consultant therefore will use its reasonable professional efforts and judgment to interpret applicable ADA and MAAB requirements and other state, local and federal regulations as they apply to the project. The Consultant however can not and does not warrant or guarantee that the Client's project will comply with all interpretations of ADA and MAAB requirements and/or requirements of other federal, state, and local laws, rules, codes, ordinances and regulations as they apply to this project.
26. The Client understands and agrees that products or materials that are permissible under current codes and ordinances may, at some future date, be banned or limited in use in the construction industry because of presently unknown hazardous and/or defective characteristics. The Client agrees that if any such product or material specified for this Project by the Consultant shall, at any future date be suspected or discovered to be defective or a health or safety hazard, then the Client shall waive all claims as a result thereof against the Consultant. The Client further agrees that if the Client directs the Consultant to specify any product or material after the Consultant has informed the Client that such product or material may not be suitable or may embody characteristics that are suspected of causing or may cause the product or material to be considered a hazardous substance in the future, the Client waives all claims as a result thereof against the Consultant and the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant from any damages, liabilities or costs including reasonable attorneys' fees and defense costs, arising in any way from the specification or use of any products or materials which, at any future date, become known or suspected health and safety hazards.
27. 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 jobsite 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 jobsite is in full compliance with all applicable laws and regulations. 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.

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