

Scituate Community Preservation Committee Funding Request Form

DATE and YEAR of Application: 27 June 2023

APPLICANT INFORMATION

Project Sponsor or Organization: JAMES W. Gilmore
Contact Name & Address: 135 First Parish Rd, Scituate 02066
Telephone Number: 617-922-9838 Email: jwfgilmore@outlook.com

PROJECT INFORMATION

CPA CATEGORY (check all that apply):

OPEN SPACE

RECREATION

HISTORIC PRESERVATION

COMMUNITY HOUSING

NAME OF PROJECT: Scituate Community Tennis Courts Upgrade

BRIEF DESCRIPTION OF PROJECT: Design Services phase including Professional Design, Permitting, Bidding & Construction Administration.

Attach additional pages including summary, budget, estimated timeline and justification of need.

Project Location or Address: Town of Scituate, Sports Complex behind the High School, EXISTING TENNIS COURT AREA.
Include map, photo and other imagery for ALL category projects.

If Open Space or Community Housing:

Assessor's Map Page, Block & Lot Number: _____

Number of acres in parcel: _____

Current Zoning Classification: _____

Assessed Value: _____

Title in name of: _____ Title Abstract Date: _____

Number of housing units proposed: _____

Summarize how this request benefits the Town of Scituate and meets the goals of the Community Preservation Act.

Complete renovation of existing failed tennis courts thus enabling full implementation of competition tennis programs as well as community recreation.

PERMITS AND APPROVALS

What permits and approvals are required? Have they been obtained or have you filed for them?

Name of Permit	Filed? (Y/N)	Filed (Date)	Obtained (Date)
Please see ACTIVITAS detailed proposal attached, dated 26 June			

Have you met with any other Town Boards or committees? If so, what were the outcomes of those meetings? (Letters of support from other Boards and committees should be included in the application or supplied at a later date.)

Recreation, School Comm, Hec, DPW, Selectboard
All favorable.

Notes: _____

What non-financial support and services are necessary, and how will these be provided?

FUNDING

Describe the proposed funding for this project. Identify other sources you are seeking funds from, and whether those funds are secured. Identify any funds you or your organizations are willing to provide.

Requesting full CPC funding for this phase.

Proposed Funding

Total Project Cost	CPC Funds Requested	Sources of Funds other than CPA	Amount	Funding Secured? (Y/N)*
\$ 110,730	\$ 110,730		\$ 110,730	
8% escalation	8,858		\$ 8,858	
			\$	
			\$	
			\$	

* If the request is still outstanding, when do you expect to hear a decision?

OTHER COMMENTS

Provide any other information you think the CPC should be aware of in evaluating your request for funding.

Please review ACTIVITAS Proposal 26 June for this phase.

By signing below, the Applicant represents he/she is duly authorized, agrees to the terms and conditions and all other requirements of this Application and agrees to be bound thereby if funding is granted for the Project.

Date: 21 June 2023 Signature:

FOR COMMUNITY PRESERVATION COMMITTEE USE

This request received by Scituate CPC on _____

Copies provided to CPC Members on _____

Additional information required: _____

Committee Vote

Votes:	Yes / No	Votes: Y/N/Abstain	Date
Recommend to Town Meeting			

Other: _____

delivered via email

26 June 2023

Mr. James Gilmore
JMFGilmore@outlook.com

**Re: Fee Proposal for Professional Design, Permitting, Bidding & Construction Administration
Tennis Courts | Scituate, MA**

BACKGROUND AND INTRODUCTION:

Activitas Inc. (*the Consultant*) is pleased to provide the Town of Scituate (*the Client*) with this Proposal for professional landscape architecture and civil engineering services for the complete renovation and expansion of the existing tennis facility located at Scituate High School in Scituate, Massachusetts. The design will be developed from our recently completed tennis feasibility study.

PROJECT EXPERTISE:

- Mark Novak, RLA, will serve as Principal-in-Charge of the project.
- Megan Buczynski, PE, will serve as Principal Civil Engineer of the project.
- Kelvin Huang, will serve as Landscape Architect/Project Manager of the project.
- Meghan Donahoe, will serve as Landscape Designer of the project.

CONSULTANTS:

- Reed Land Surveying, Inc., Lakeville, MA will provide an existing conditions survey update
- Haley & Aldrich, Inc., Boston, MA will perform geotechnical exploration services
- NV5, Andover, MA will perform electrical engineering services

SCOPE OF SERVICES:

The Consultant will provide professional Athletic Facility Design Services as outlined below for the development of this Project. Services are anticipated to include:

- Preparation of Existing Conditions Survey Update
- Assistance to the Client with Project Programming
- Assistance to the Client with the Selection of Athletic Surfacing Materials and Equipment
- Preparation of Design Development Drawings
- Assistance to the Client with Community Consensus Meetings
- Preparation of Construction Documents for Public Bid
- Preparation of Technical Specifications for Public Bid
- Assistance to the Client during the Bidding Phase
- Assistance to the Client during the Construction Phase

PART I. BASIC SERVICES:

A. PHASE 0: EXISTING CONDITIONS INFORMATION

Item 0.1: Existing Conditions Survey Update

Activitas will coordinate with Reed Land Surveying for the procurement of an electronic existing conditions survey update to include the project area identified during our recent master plan study. The survey information is required for the production of bid documents and to 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. Invert elevations will be measured in structures that can be opened. Utility research will be performed for the survey area. The survey includes a partial boundary retracement of the Town owned land and right of ways within the project site.

Item 0.2: Preliminary Subsurface Exploration Plan

Activitas will coordinate with Haley & Aldrich to prepare a series of subsurface explorations to better understand the near surface soil, bedrock, and groundwater conditions within the proposed limits of the new field. In particular, explorations will focus on conditions that could impact design and the construction costs for the project.

The proposed subsurface exploration program is anticipated to include one day of geoprobe explorations to observe the thickness of topsoil, underlying soils and potential for bedrock within the court surface area. Approximately five (5) geoprobes advanced to a depth of up to 15' below ground surface are assumed.

Haley & Aldrich will also prepare a memorandum that contains a summary of the results of the subsurface investigations and provides geotechnical design guidance relative to subgrade preparation during construction of the new courts and other geotechnical considerations that may improve their long-term performance.

B. PHASE 1: DESIGN DEVELOPMENT

Item 1.1: Program Verification

Activitas will meet with the Client to confirm the project program and design requirements developed during the master plan study. The intent of the meeting will be to verify the final program, establish the level of detail of the proposed improvements and confirm the project design schedule for community consensus and public bid.

It is assumed that the program will include:

- One (1) post-tension concrete tennis court battery with five (5) regulation tennis courts.
- Fencing and athletic equipment
- Accessible route to courts

- Retaining wall, spectator seating and storage units
- Tennis court lighting (bid as an alternate)

Item 1.2: Design Development

Based upon the results of the program verification meeting, Activitas will update the approved master plan layout and prepare Design Development Drawings that describe the proposed courts and peripheral landscape in preliminary layout and materials. The plans will consider appropriate layout recommendations for competitive and recreational tennis.

Specific products for this phase are anticipated to include:

- Site Preparation & Erosion Control Plan
- Layout and Material Plan
- Grading and Drainage Plan
- Tennis Court and Equipment Details
- Tennis Court Lighting and Electrical Plan (alternate)
- Site Landscape and Restoration Plan

Plans will be provided to the Client for review at 50% and 95% completion.

Based on the Client approved plan, Activitas will also prepare a preliminary Drainage Report to assist in the determination of stormwater management requirements.

Item 1.3: DD Cost Opinion Update

Based on the Design Development plans and input from the Client and community, Activitas will update the Cost Opinion prepared during the recent master plan effort at the 95% submission.

Item 1.4: DD Phase Review Meeting

Activitas will prepare for and attend up to two (2) Client meeting (in addition to the Programming Meeting) during this initial phase of the project. It is anticipated that these meetings will include two (2) Owner Review Meeting.

If additional meetings are required and are requested by the Client or Owner, they will be billed as an Additional Service in accordance with Part III of this proposal.

C. PHASE 2: PROJECT PERMITTING AND COMMUNITY CONSENSUS

Item 2.1: Planning Stormwater Permit Submission

Based on the initial review of the site, it is not anticipated that any regulatory permitting (other than the Planning Department's Stormwater Permit Application process) will be required. Activitas will meet with the Town's Planner to confirm this. For the purposes of this proposal, filing of permit applications (other than the SW Permit) is not included. If it is determined that filings are required,

they will be billed as an additional service.

Item 2.2: Community Consensus Meeting

Activitas will prepare for, attend and lead an informational meeting with members of the proximate neighborhood and greater Scituate community for the purpose of reviewing the proposed plan and receiving feedback. The presentation will be prepared in electronic format to assist in showing the proposed improvements and the methods of mitigating potential neighborhood impacts.

D. PHASE 3: DETAILED DESIGN AND CONSTRUCTION DOCUMENTS

At the completion of the Design Development Phase, 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 court facility and associated site/landscape improvements.

Item 3.1: Construction Documents

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

- Cover Sheet
- Existing Conditions Plan
- Site Preparation Plan and Details
- Erosion Control Plan and Details
- Layout and Material Plan
- Grading and Drainage Plan
- Tennis Court Paving, Fencing and Equipment Details
- Site Restoration and Landscape Plan
- Site and Utility Details

Activitas will also prepare Technical Specifications and will compile the Project Manual for a publicly bid project. It is assumed that the Client will assist in the preparation of the front-end matter and selection of the contract form. Specification sections are anticipated to include:

Division 00 00 00 – Front End Matter - Bidding Requirements, Contract Forms and General Conditions

- | | |
|------------------|---|
| Section 00 01 15 | List of Drawings |
| Section 00 21 13 | Instructions to Bidders |
| Section 00 41 00 | Form for General Bid |
| Section 00 48 00 | Affidavit of Compliance and Vote of Corporation |
| Section 00 48 50 | Statement of State Tax Compliance |
| Section 00 52 13 | Agreement Form – Stipulated Sum |

Section 00 54 00	Agreement Form Supplements
Section 00 61 13.13	Performance Bond
Section 00 61 13.16	Labor and Materials Payment Bond
Section 00 73 16	Insurance Requirements

Division 01 00 00 – General Requirements

Section 01 11 00	Summary of Work
Section 01 22 00	Unit Prices
Section 01 23 00	Alternates
Section 01 31 19	Project Meetings
Section 01 33 00	Submittals
Section 01 50 00	Temporary Facilities
Section 01 70 00	Project Closeout
Section 01 78 36	Warranties
Section 01 78 39	Record Drawings

Division 02 00 00 – Existing Conditions

Section 02 00 00	Site Requirements
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Division 03 00 00 – Concrete

Section 03 00 00	Cast-in-Place Concrete
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Division 11 00 00 – Equipment

Section 11 68 00	Site Athletic Equipment
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Division 12 00 00 – Furnishings

Section 12 93 00	Site Furnishings
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Division 26 00 00 – Electrical

Section 26 00 00	Electrical (including sports lighting specifications)
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Division 31 00 00 – Earthmoving

Section 31 00 00	Earthwork
Section 31 10 00	Site Preparation
Section 31 11 00	Erosion and Sediment Control

Division 32 00 00 – Exterior Improvements

Section 32 12 16	Bituminous Concrete Pavement
Section 32 13 13	Cement Concrete Pavement
Section 32 13 13.19	Post Tension Concrete Pavement
Section 32 18 23.53	Court 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 System

Construction Documents will be submitted to the Client for review at the 95% milestone.

Item 3.2: CD Phase Cost Opinion Update

Activitas will update the cost opinion at the completion of construction documents.

Item 3.3: CD Phase Meeting

Activitas will prepare for and attend up to one (1) Client meeting during this phase of the project. It is anticipated that this meeting will be to review the drawing set prior to bid.

If additional meetings are required and are requested by the Client, they will be billed as an Additional Service in accordance with Part III of this proposal.

E. PHASE 4: PROJECT BIDDING

Item 4.1: Bid Phase Services

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 the local paper. It is assumed that the Town of Scituate will submit all necessary advertisements to CommBuys.

It is assumed that all distribution shall be electronic and that Bidders will be responsible for printing documents at their own expense.

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

Activitas will also prepare addenda information as required. It is assumed that no more than one (1) addenda will be required. If additional addenda are required through no fault of Activitas, the time will be billed at an additional service.

Activitas will assist the Client in the evaluation of bids, contractor qualifications and award and execution of the Construction Contract.

F. PHASE 5: SERVICES DURING CONSTRUCTION

Activitas understands that approval for Phase 5 scope is subject to approval of the project at Town Meeting and approval of the Town Manager.

Item 5.1: Construction Meetings and Site Visits

Activitas will attend the Pre-Construction Conference and general construction meetings during

the construction period. It is assumed that meeting notes will be prepared and distributed by Activitas. It is assumed that there will be approximately six (6) meetings in addition to the Pre-Construction Conference.

Activitas will provide limited construction and quality control monitoring services during the anticipated construction period. It is not anticipated that continuous on-site services to oversee daily construction and monitor all deliveries will be required.

In conjunction with the general construction meetings, it is anticipated that Activitas will make periodic site visits to familiarize ourselves with the progress of the work.

Item 5.2: Office Administration

Activitas will provide assistance to 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, and the preparation of sketches and field reports.

Item 5.3: 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. A total of twelve (12) hours are included for Project Closeout services. 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.

G: 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 and overnight delivery and shall be invoiced at 1.15 times their actual cost. Expenses will be billed monthly as they accrue against the estimated total.

Expenses for the Consultant are not anticipated to exceed the amount listed in Part II. In the event that expenses exceed this amount, the total will be increased by the Client as required. The Consultant will not proceed with expenses beyond the anticipated total without the prior written approval of the Client.

PART II. COMPENSATION FOR SERVICES

	Activitas	Reed Land Surveying	Haley & Aldrich	NV 5	Subtotal:	
A. PHASE 1: PRELIMINARY DESIGN AND APPROVALS						
Task 0: Existing Conditions Information					\$25,590	
Item 0.1:	Existing Conditions Survey Update	\$1,148	\$9,675		\$10,823	
Item 0.2:	Preliminary Subsurface Exploration Plan	\$1,343	\$13,425		\$14,768	
Task 1: Design Development					\$14,410	
Item 1.1:	Project Program Verification Meeting	\$1,630			\$1,630	
Item 1.2:	Design Development	\$4,890		\$3,200	\$8,090	
Item 1.3:	DD Cost Opinion Update	\$1,130			\$1,130	
Item 1.4:	DD Phase Meetings (2)	\$3,160		\$400	\$3,560	
Task 2: Project Permitting and Community Consensus					\$11,800	
Item 2.1:	Planning Stormwater Permit Submission	\$9,580			\$9,580	
Item 2.2:	Community Consensus Meeting	\$2,220			\$2,220	
Task 3: Detailed Design and Construction Documents					\$20,745	
Item 3.1:	Construction Documents	\$11,015	\$1,750	\$6,000	\$18,765	
Item 3.2:	CD Phase Meeting	\$680			\$680	
Item 3.3:	CD Phase Meeting	\$900		\$400	\$1,300	
Task 4: Project Bidding					\$3,800	
Item 4.1:	Bid Phase Services	\$3,800			\$3,800	
Task 5: Services During Construction					\$29,385	
Item 5.1:	Construction Meetings and Site Visits (6)	\$15,090		\$1,200	\$16,290	
Item 5.2:	Office Administration	\$8,550		\$1,500	\$10,050	
Item 5.3:	Project Closeout	\$2,295		\$750	\$3,045	
Subtotal:		\$67,430	\$9,675	\$15,175	\$13,450	\$105,730
Reimbursable Expense Budget					\$5,000	

PART III. ADDITIONAL SERVICES

- A. If services are authorized by the Client 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) the preparation of drawings for phased construction; 7) traffic engineering; 8) structural engineering; 9) pile cap or spread footing sports light pole footing design; 10) Design or application for LEED Certification 11) Clerk of the Works services; 12) 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.....	250.00
PRINCIPAL CIVIL ENGINEER.....	250.00
SENIOR ASSOCIATE.....	175.00
ASSOCIATE.....	150.00
PROJECT MANAGER.....	150.00
CIVIL ENGINEER.....	150.00
CIVIL DESIGNER / E.I.T.	125.00
PROJECT LANDSCAPE ARCHITECT	115.00
CIVIL DESIGNER.....	115.00
STAFF LANDSCAPE ARCHITECT	100.00
CLERICAL	70.00

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

CLIENT AUTHORIZATION

The Client agrees with Parts I, II, III and IV which includes the Scope of Services, Compensation for Services Additional Services, and Terms and Conditions.

Mark Novak, RLA
Design Principal | Activitas Inc.

Town of Scituate

Date: 26 June 2023

Name & Title: _____

Authorization for Phases 1-4:

Name & Title _____

Date: _____

Authorization for Phase 5:

Name & Title _____

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 will 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 will keep the Client informed about the progress of the Work and will 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.

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 and all reimbursable costs 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.