



**CITY COUNCIL
MEETING AGENDA
December 21, 2023**

**Mark Ammel, Mayor
Karen Moore, Mayor Pro Tem
Ronald J. Beauchamp, Council Member
Tyler DuBord, Council Member
Todd Flath, Council Member**

**James R. McNeil, City Manager
Phil DeMay, City Clerk
Laura J. Genovich, City Attorney**

City Council Chambers located at: City Hall – 410 Ludington Street – Room C101 – Escanaba, MI 49829

The Council has adopted a policy to use a Consent Agenda, when appropriate. All items with an asterisk (*) are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which event, the item will be removed from the General Order of Business and considered in its normal sequence on the Agenda.

Regular Meeting

Thursday, December 21, 2023, at 7:00 p.m.

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE

APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting – December 7, 2023

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION(S)

BRIEF PUBLIC COMMENT(S)

PUBLIC HEARINGS – None

UNFINISHED BUSINESS – None

NEW BUSINESS

1. Informational Presentation - DDA.

Explanation: The Escanaba Downtown Development Authority will give an informational presentation as required by Public Act 57 of 2018 to the council, DDA board, Taxing jurisdictions and the public on its activities during the past year and goals for the coming year.

2. Reason. Professional Services Agreement – RAP 2.0 Streetscape and Restrooms – City Manager

Explanation: Administration is requesting City Council approval of a professional services agreement with C2AE in an amount not to exceed \$65,000. This project will be administered concurrent with the CWSRF project.

APPOINTMENTS

BOARD, COMMISSION, AND COMMITTEE REPORTS

GENERAL PUBLIC COMMENT

ANNOUNCEMENTS

ADJOURNMENT

Respectfully Submitted,

A handwritten signature in blue ink that reads "James R. McNeil".

**James R. McNeil
City Manager**

**OFFICIAL PROCEEDINGS
CITY COUNCIL
CITY OF ESCANABA, MICHIGAN
Regular Council Meeting
Thursday, December 7, 2023**

The meeting was called to order by the Honorable Mayor Mark Ammel at 7:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Mark Ammel, Council Members, Ronald J. Beauchamp, Tyler DuBord, Todd Flath, and Karen Moore

Absent: None

Also Present: City Manager James R. McNeil, City Clerk Phil DeMay, Department Heads, media, and members of the public.

City Clerk DeMay led Council in the Pledge of Allegiance.

Flath moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve Special Meeting minutes from November 13, 2023, as submitted.

Flath moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting minutes from November 16, 2023, as submitted.

Abstain: Mayor Ammel

ADJUSTMENTS TO THE AGENDA

DuBord moved, Moore seconded, **CARRIED UNANIMOUSLY**, to remove New Business Item #5 from the agenda.

Flath moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as amended.

CONFLICT OF INTEREST DECLARATION – None

BRIEF PUBLIC COMMENT

- Andy Simon – discussed New Business Item #2 Ordinance No. 1286.

PUBLIC HEARINGS – None

UNFINISHED BUSINESS – None

NEW BUSINESS

NB-1 Approval - 2024 City Council Meeting Dates – Manager.

Administration sought City Council approval of the 2024 regular Annual Council Meeting schedule.

NB-1 Beauchamp moved, Moore seconded, **CARRIED UNANIMOUSLY**, to approve of the 2024 regular Annual Council Meeting schedule, with the adjustment of canceling the July 4th meeting.

NB-2 First Reading of Ordinance No. 1286, An Ordinance to Allow for the Keeping of Chickens and Ducks Within the City, and Setting the Date of Thursday, December 21, 2023, for the Second Reading, Public Hearing, and Adoption – Planning & Zoning.

Administration requested the City Council to consider this the first reading of Ordinance No. 1286, An Ordinance to Allow for the Keeping of Chickens and Ducks Within the City. Administration requested that the City Council set December 21, 2023, for the second reading, public hearing adoption of Ordinance No. 1286.

NB-2 Moore moved, to consider this the first reading of Ordinance No. 1286, An Ordinance to Allow for the Keeping of Chickens and Ducks Within the City and to set December 21, 2023, for the second reading, public hearing adoption of Ordinance No. 1286.

Motion failed due to a lack of a second.

NB-3 Approval – Agreement for the State and Local Cybersecurity Grant Program.

Administration sought City Council approval for a Local Consent Agreement to apply for funding for Cybersecurity Assessments and for Incident Response Planning and Training Activities. Funding for grant opportunities were set aside in 2022 and are being dispersed over the next several years.

NB-3(a) Flath moved, Moore seconded, to approve for a Local Consent Agreement to apply for funding for Cybersecurity Assessments and for Incident Response Planning and Training Activities.

Upon a call of the roll, the vote was as follows:

Ayes: Flath, Moore

Nays: Beauchamp, DuBord, Mayor Ammel

MOTION FAILED.

NB-3(b) DuBord moved, Beauchamp seconded, to postpone the State and Local Cybersecurity Grant Program to the next meeting in order to have more time to review.

Upon a call of the roll, the vote was as follows:

Ayes: DuBord, Beauchamp, Moore, Flath, Mayor Ammel
Nays: None

MOTION CARRIED.

NB-4 Approval – Forestry Truck – Public Works.

Public Works sought City Council approval to purchase a 2015 75'(foot reach) F750 Urban Forestry Bucket Truck for \$83,000 from M and M Equipment, Battle Creek, MI.

NB-4 Moore moved, Beauchamp seconded, to approve to purchase a 2015 75'(foot reach) F750 Urban Forestry Bucket Truck for \$83,000 from M and M Equipment, Battle Creek, MI.

Upon a call of the roll, the vote was as follows:

Ayes: Moore, Beauchamp, DuBord, Flath, Mayor Ammel
Nays: None

MOTION CARRIED.

APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES

City Manager, with Council Consensus made the following reappointment:

John Anthony reappointed to the Electrical Advisory Committee, expiring January 1, 2027.

BOARD, COMMISSION, AND COMMITTEE REPORTS

Council Members reviewed City Board and Commission meetings each attended since the last City Council Meeting.

GENERAL PUBLIC COMMENT – None

ANNOUNCEMENTS

- Thanked DDA Board member Janice Beauchamp for her great job running a very successful Christmas Parade.

Hearing no further public comment, Flath moved, DuBord seconded, the Council adjourned at 7:58 p.m.

Respectfully submitted,

Phil DeMay
City Clerk

Approved: _____
Mark Ammel, Mayor

Agenda Item: NB-1
Date: 12/15/2023

City Council Agenda Item Request

Date: 12-13-23

Name: Craig Woerpel

Department: Escanaba DDA

Item: Informational Presentation

Meeting date requested: 12-21-23

Explanation for request:

The Escanaba Downtown Development Authority will give an informational presentation as required by Public Act 57 of 2018 to the council, DDA board, taxing jurisdictions and the public on its activities during the past year and goals for the coming year.

Agenda Item: NB-2
Date: 12/15/2023

City Council Agenda Item Request

Date: 12/15/2023

Name: James McNeil

Department: Manager

Item: Professional Services Agreement - RAP 2.0 Streetscape and Restrooms

Meeting date requested: 12/21/2023

Explanation for request:

Administration is requesting City Council approval of a professional services agreement with C2AE in an amount not to exceed \$65,000. This project will be administered concurrent with the CWSRF project.



1211 Ludington Street
Escanaba, MI 49829
906.233.9380
www.c2ae.com

December 14, 2023

Mr. James McNeil
City Manager
City of Escanaba
1211 Ludington Street
Escanaba, MI 49829

Re: Proposal for Professional Services: East Ludington Streetscape and Restrooms Project

Dear Mr. McNeil,

We are grateful for the opportunity to provide our architectural and engineering services proposal for your consideration for the East Ludington Streetscape and Restrooms Project funded by the MEDC RAP 2.0 Grant and the City/Downtown Development Authority (DDA). C2AE is working with the City on Ludington Street utility improvements, and we are excited about the DDA's involvement in the sidewalk restoration components. We are pleased that the MEDC awarded the project \$330,000 in grant funds! Ludington Street is a major attraction within the City and across Delta County because of its' downtown commerce, Municipal Dock recreation area, and as a gateway to the beautiful Ludington Park.

Project Understanding

The East Ludington Streetscape and Restrooms Project (estimated project cost of \$660,000) will involve a variety of elements between 2nd Street and 5th Street, including:

- (Division A) Traffic calming elements such as curb extension "bump-outs" and traffic islands
- (Division A) Pedestrian and public access improvements such as angle parking, mid-block crossings, bike racks, tree plantings and other landscaping
- Public access, pedestrian safety, and placemaking/beautification improvements such as angled parking, mid-block crossings, bike racks, tree plantings and other landscaping.
- (Division A) Construction of sidewalk and parking elements to connect the restroom facilities, Municipal Dock, and Ludington Park
- (Division B) Replacement of existing restroom with a new ADA compliant facility (up to 1,000 sq ft).

This project will be coordinated with and likely incorporated into the on-going Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) utility improvement projects.

Scope

1. Kick-Off Meeting: Meet with the City, Third-Party Administrator (TPA), and project stakeholders to review the project requirements, including the project limits, scope of services and schedule, and to obtain pertinent background information.

2. Survey: Collect any necessary additional topographic survey information for the restroom facility and sidewalk areas for use in the design process.
3. Soil Borings: Coordinate collection of one soil boring for the restroom facility. Streetscape elements will utilize existing soil borings performed along Ludington Street.
4. Schematic Design: Once survey information is collected and base drawings generated, we will refine the conceptual design included in the grant application and prepare an updated opinion of probable construction cost for the City's review. Bathroom facility will be based on a general schematic provided by the City. The intent for the bathroom facility is to be a precast facility.
5. Preliminary Design: Refine the schematic design drawings. Identify the permits required for the project and begin engagement with EGLE and other agencies. Coordinate with UPSAIL, who will be providing guidance on Universal Design for the project. Identify potential utility conflicts and engage with utility companies to discuss remedies. Based on our meeting with MEDC representatives, the State Historic Preservation Office (SHPO) environmental review will not be needed.
6. Final Design: Based on the approved preliminary design documents and any further adjustments authorized by the City in the scope or quality of the project or in the construction budget, C2AE shall prepare a complete set of construction drawings and specifications (contract drawings), which includes all information required to bid and construct the project. The final design will represent 100% of the total design effort for the project. We will meet with the City to review the final design. The final design submission shall consist of the following information:
 - a. Final drawings to include the following:
Division A Streetscape Intersection details, paving, and curb layout; mid-block crossing, decorative paving, landscaping, site furnishings and other site amenities
Division B Restrooms (as directed by the City) will be a precast bathroom facility.
 - b. Complete technical specifications
 - c. Detailed opinion of probable construction cost
 - d. Preliminary construction schedule (to be inserted into the project manual)
 - e. Final permits, secured with any mitigation and/or other requirements incorporated into the contract documents
7. Bidding Assistance: Bidding will be divided into Division A for Streetscape and Division B for Restrooms. C2AE will incorporate Division A and B plans and specifications into the CWSRF project manual. Bidding services will be performed at the same time as the CWSRF Project and we shall respond to contractor questions and issue addenda as necessary regarding the streetscape and restroom elements.
8. Construction Services: Services will be performed in conjunction with the CWSRF project. An additional pre-construction conference with the successful bidder, TPA, City staff, and funding agency representatives will be performed to ensure a complete understanding of the project and schedule. Construction Administrator and Resident Project Representative (RPR) on the CWSRF project will also cover the oversight of the streetscape work. Three (3) site visits will be performed on the Restroom Facility. Review shop drawings, materials, and submittals related to the streetscape and restrooms. Attend CWSRF monthly progress meetings. Prepare final punch list for these project elements. Provide record drawings.



Assumptions

1. Completed 2023 borings for CWSRF will be sufficient for streetscape work.
2. City will be responsible for all required permit application and review fees.
3. If required, Certified Grant Administrator (CGA) and Environmental Consultant will be contracted directly by the City and not part of our contract.
4. Grant application conceptual plans provided by the DDA shall be used as the design concept for the Streetscape project.
5. Restroom Facility concept and layout shall be of a prefabricated structure as selected by the City.
6. Contractor staking and testing will be required for both the streetscape work and the restroom facility.

Schedule

C2AE proposes to complete the services, as outlined herein, as follows:

Contract Authorization	December 21, 2023
Schematic Design Phase	January 12, 2024
Preliminary Design Phase	January 26, 2024
Final Design Phase	February 29, 2024
Bidding Phase (Divisions A & B)	March 2024
Construction Phase	June 2024 – November 2025
Construction Phase shall be synchronized with CWSRF Project.	

Fee

C2AE proposes to provide the services, as outlined herein, as follows:

Schematic Design	\$10,000
Preliminary Design and MEDC-required Reviews	\$12,000
Final Design - Streetscape	\$14,000
Final Design – Bathroom Facility	\$14,000
Bidding Phase	\$3,000
Construction Staking and Material Testing	\$4,500
<u>Construction Phase (Time and Material - Estimated)</u>	<u>\$7,500</u>
Total AE Fee	\$65,000

Invoices will be forwarded on a monthly basis and are due upon receipt.



We have included our Standard Contract Provisions as part of our proposal. If the terms and conditions as stated are acceptable, please countersign and return one copy to our office. Please do not hesitate to contact us should you have any questions or concerns, or If you need additional information.

Sincerely,
C2AE

A handwritten signature in black ink, appearing to read 'D. Pionk'.

Darren Pionk
Project Manager

Accepted by:

City of Escanaba

Date

C2AE Standard Owner-A/E Contract Provisions, 2023

The parties to this agreement, Capital Consultants, Inc., dba "C2AE" in Michigan and dba "Capital Consultants Architecture and Engineering" in New York, hereinafter called C2AE and "City of Escanaba", in Delta County, Michigan, hereinafter called OWNER, hereby agree to the following conditions:

- A. Scope of Services: OWNER and C2AE have agreed to a written description of services C2AE will provide to OWNER for an established compensation, hereafter referred to as "Scope of Services". Additional Services may be agreed to in writing by OWNER and C2AE in addition to the Scope of Services. Services not set forth in written agreement are specifically excluded from the scope of C2AE's services, including any "financial advising" services. C2AE assumes no responsibility to perform any services not specifically agreed to in writing.
- B. Standard of Care: C2AE shall perform its services consistent with the professional skill, care, and timeliness ordinarily provided by professional engineers and architects practicing in circumstances of similar time and place. C2AE makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by C2AE. However, C2AE shall correct any technical accuracy deficiencies in C2AE's Instruments of Service without additional compensation.
- C. Schedule: C2AE shall ordinarily perform its services within a reasonable time. Upon OWNER's request, C2AE shall prepare and submit for OWNER approval a detailed schedule for the performance of C2AE's services. This schedule shall include reasonable allowances for review and approval times required by OWNER, performance of services by OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by OWNER, or for delays or other causes beyond C2AE's reasonable control.
- D. Changed Conditions: If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to C2AE are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, C2AE may call for renegotiation of appropriate portions of this Agreement. C2AE shall notify OWNER of the changed conditions necessitating renegotiation, and both parties shall promptly and in good faith renegotiate 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.
- E. Payment Terms: Invoices prepared to C2AE's standard format will typically be submitted by C2AE monthly, are due upon receipt, and shall be considered past due if not paid within thirty (30) calendar days of the due date. If work is abandoned or suspended, C2AE shall be paid in full for services performed prior to receipt of written notice from OWNER of abandonment or suspension. If OWNER fails to make payments when due, C2AE may charge interest at one-and-one-half (1.5) percent or the maximum rate allowable by law, whichever is less, per month on the past due amount, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. In addition, if OWNER fails to make payments when due or otherwise is in breach of this Agreement, C2AE may suspend performance of services when any invoice for services remains unpaid 60 days after the date of the invoice and upon five (5) calendar days' notice to OWNER. C2AE shall have no liability whatsoever to OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by OWNER. Upon payment in full by OWNER, C2AE 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 C2AE to resume performance.
- F. Disputed Invoices: OWNER shall not withhold amounts from C2AE's compensation to impose a penalty or liquidated damages on C2AE, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless C2AE agrees or has been found liable for the amounts in a binding dispute resolution proceeding. If OWNER objects to any portion of an invoice, OWNER shall so notify C2AE in writing within ten (10) calendar days of receipt of the invoice. OWNER 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 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.

G. Regulatory Compliance: C2AE shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of submission to building authorities, including the Americans with Disabilities Act (ADA) which provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to persons with disabilities. Design changes made necessary by newly enacted laws, codes and regulations after submission date shall entitle C2AE to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provision of this Agreement. OWNER acknowledges that the requirements of laws, codes, and regulations, including the ADA, will be subject to various and possibly contradictory interpretations. C2AE, therefore, will use its reasonable professional efforts and judgment to interpret applicable requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. C2AE, however, cannot and does not warrant or guarantee that OWNER's project will comply with all interpretations of all the requirements of federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.

H. Errors and Omissions and CONSULTANT's Limit of Liability: In recognition of the relative risks and benefits of the Project to both OWNER and C2AE, the risks have been allocated such that OWNER agrees, to the fullest extent permitted by law, to limit the liability of C2AE and its officers, directors, shareholders, employees, and sub-consultants 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 C2AE and its officers, directors, shareholders, employees, and sub-consultants shall not exceed \$10,000 or C2AE'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.

I. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor C2AE nor their respective officers, directors, shareholders, employees, and 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 OWNER and C2AE 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.

J. Dispute Resolution: OWNER agrees that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for nonbinding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. Any party hereto may initiate mediation within the time allowed for filing for arbitration as set forth below and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto. Any time expended in mediation shall not be included in calculating the time for filing arbitration. If mediation fails to resolve the claim or dispute, the matter shall be submitted to arbitration with the American Arbitration Association under the Construction Industry rules, unless the parties mutually agree otherwise or unless a plaintiff not a party hereto institutes litigation in a court of competent jurisdiction and said court takes personal jurisdiction over one of the parties hereto regarding the same subject matter as in dispute between the parties hereto. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement except by written consent of the parties and such consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person(s) shall be specifically enforceable under the prevailing arbitration law. The demand for arbitration shall be made within one (1) year of the date the claimant knew or should have known

of the existence of the claim, dispute, or other matter. If the demand for arbitration is not effectuated within one (1) year, the claim, dispute, or other matter shall be forever barred and not mandatory. The decision rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event either party makes a claim or brings action against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys' fees) incurred by the other party in defense of such claim or action.

K. Mutual Indemnification: Neither OWNER nor C2AE shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence. C2AE agrees, to the fullest extent permitted by law, to indemnify and hold harmless OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by C2AE's negligent performance of professional services under this Agreement and that of its sub-consultants or anyone for whom C2AE is legally liable. Likewise, OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless C2AE, its officers, directors, employees and sub-consultants (collectively, C2AE) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by OWNER's negligent acts in connection with the project and the acts of its contractors, subcontractors or consultants or anyone for whom OWNER is legally liable.

L. Use of Documents: All Documents (data, reports, drawings, specifications, models, and other deliverables, whether in printed or digital format) are Instruments of Service for which C2AE shall retain all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of C2AE. C2AE grants to OWNER a nonexclusive license to use C2AE's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that OWNER substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The license granted under this section permits OWNER to authorize the Contractor, Construction Manager, Subcontractors, and material or equipment suppliers, as well as OWNER's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by C2AE, or for use or reuse by OWNER or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by C2AE; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by C2AE, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to C2AE or to its officers, directors, employees, and sub-consultants; (3) OWNER shall indemnify and hold harmless C2AE and its officers, directors, employees, and sub-consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by C2AE; and (4) such limited license to OWNER shall not create any rights in third parties. C2AE and OWNER warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

M. Construction Activities: Neither the professional activities of C2AE nor the presence of C2AE or its employees and sub-consultants at a project site shall relieve the 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. C2AE and its personnel have no authority to approve construction change orders or to issue stop work orders. C2AE 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. OWNER agrees that the Contractor shall be solely responsible for jobsite safety and warrants that this intent shall be carried out in OWNER's contract with the Contractor. OWNER also agrees that OWNER and C2AE and its sub-consultants shall be included as indemnified parties by the Contractor in OWNER-Contractor agreement and shall be made additional insureds under the Contractor's policies of general liability insurance.

N. 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. Both parties acknowledge that C2AE's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event C2AE or any other party encounters any hazardous or toxic materials, or should it become known to C2AE that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of C2AE's services, C2AE may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until OWNER 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. OWNER agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless C2AE, its officers, directors, employees and sub-consultants (collectively, C2AE) 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 C2AE.

O. Opinions of Probable Construction Cost: When in the Scope of Services C2AE provides opinions of probable construction cost, OWNER understands that C2AE 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 C2AE's opinions of probable construction costs are made on the basis of C2AE's professional judgment and experience. C2AE makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from C2AE's opinion of probable construction cost.

P. Distribution of Digital Documents: When in the Scope of Services C2AE provides digital information extracted from its Instruments of Service to OWNER or to others on behalf of OWNER, the recipient of the information will be required to agree to C2AE's Release of Electronic Documents Agreement, including compensation for C2AE to prepare the files. Under no circumstances shall delivery of electronic files by C2AE be deemed a sale, and C2AE makes no warranties, either express or implied, of merchantability and fitness of electronic files for any particular purpose. In no event shall C2AE be liable for any loss of profit or any consequential damages as a result of OWNER's or other's use or reuse of these electronic files.

Q. Record Documents: When identified in the Scope of Services and upon completion of the work C2AE shall compile for and deliver to OWNER a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which C2AE shall assume will be reliable, C2AE cannot and does not warrant their accuracy.

R. Design Without Construction Administration: When the Scope of Services does not include substantial involvement in project observation or review of the Contractor's performance or other construction phase services, OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation, and OWNER waives any claims against C2AE that may be in any way connected thereto. In addition, OWNER agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless C2AE, its officers, directors, employees and sub-consultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of C2AE.

S. On-site Construction Observation: When the Scope of Services includes part-time or full-time on-site project representation in order to observe the progress and quality of the work completed by the Contractor such observation is not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather is to allow C2AE, 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. Such observation shall include keeping OWNER informed about the progress of the work and C2AE shall endeavor to guard OWNER against deficiencies in the work. In any case, C2AE 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. Finally, C2AE shall not be responsible for any acts or omissions of the Contractor, sub-contractor, any entity performing any portions of the work, or any agents or employees of any of them and 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.