

**AGREEMENT BETWEEN OWNER AND PROJECT CONSULTANT
for Limited Professional Services**

This Agreement, effective as of the date of, 2012, is between

the Owner: Town of Pound Ridge
 The Town House, 179 Westchester Avenue
 Pound Ridge, New York 10576

and the Project Consultant: Maurice Wrangell, ASLA
 336 East 22nd Street
 New York, New York 10010

for the following Project: Replacement of Finish and Related Repairs
 Town of Pound Ridge Swimming Pools
 Pound Ridge, New York

Article 1 Attachment

- A. A copy of the Project Consultant's proposal for services dated 21 May 2012 is hereby attached to, and made a part of this agreement as hereinafter referenced.

Article 2 Project Description

- A. Replacement of existing white plaster finish with new white plaster finish, repair/replacement of existing tile and limited joint repair on two existing outdoor swimming pools and one existing wading pool.

Article 3 Project Consultant's Services, General Provisions

- A. Services shall include those services performed by the Project Consultant, its employees and its consultants including engineering disciplines normal to the Project scope. Project Consultant agrees to provide its professional services in accordance with generally accepted standards of its principal's professional discipline. The principal of the Project Consultant is Maurice Wrangell, RLA, licensed to practice in the State of New York as registered landscape architect.

Article 4 Project Consultant's Basic Services

- A. The Project Consultant agrees to provide to the Owner as Basic Services the services outlined under: ' I Services, 1. through 8' in the attached proposal identified under Article 1 above.

Article 5 Project Consultant's Additional Services

- A. Additional Services beyond Project Consultant's Basic Services may be provided if confirmed in writing by the Owner. They are to be provided at additional compensation as set forth below.
- B. Additional Services shall be as described under: ' II Compensation, 4. a) through f)' in the attached proposal identified under Article 1 above.

Article 6 Excluded Services

- A. The Project Consultant shall not be responsible for construction management, topographic (or property) survey(s), subsurface exploration, exposing concealed conditions, sampling and testing or the location, effects, evaluation, handling or disposal of hazardous materials encountered at the Project.

Article 7 Owner's Responsibilities

- A. The Owner shall be responsible for final determination of the project scope and objective constituting the basis of/for this agreement.
- B. The Owner agrees to provide the Project Consultant with, and pay for, all information, surveys, soil borings and pertinent professional reports dealing with existing conditions as requested by Project Consultant as a basis for providing its professional services. Project Consultant may reasonably rely on the accuracy and completeness of these items.
- C. The Owner agrees to advise The Project Consultant of any known or suspected contaminants at the Project site and shall be responsible for all testing for hazardous materials as required by code or law. Owner agrees to be solely responsible for all subsurface soil conditions unless otherwise agreed to in writing.
- D. The Owner shall pay all filing fees and fees for all necessary permits from the authorities having jurisdiction over the project including inspection fees for inspections of the Work by agency or other authorized inspectors.
- E. The Owner shall provide all legal, accounting and insurance counseling services that may be necessary at any time during the Project, including audits that the Owner may require to verify the construction contractors' Applications for Payment or to ascertain how or for what purposes the contractor for construction has used money paid by the Owner.
- F. The Owner agrees to provide the aforesaid information and to render decisions in a timely manner so as not to delay the orderly and sequential progress of the Project Consultant's services.

Article 8 Project Schedule and Estimated Budget

- A. Project Consultant shall render its services as expeditiously as is consistent with professional skill and care. Project Consultant and Owner agree, however, that in the course of the Project, anticipated and/or unanticipated events may impact any Project schedule.
- B. The Owner recognizes that construction costs tend to be market-driven and the Project Consultant does not warrant or represent that bids received will be within the amount of the budgeted cost of construction or that construction will be completed within the stipulated Contract Time. Owner acknowledges that significant changes to the Project schedule, budget or the Project's scope may require Additional Services of Project Consultant.

Article 9 Compensation

- A. The Owner agrees to pay the Project Consultant as follows:

- 1. **Basic Services:** A fixed fee of fifteen thousand dollars (\$ 15,000.00) plus reimbursable expenses. The fixed fee amount shall break down as follows:

Attached Proposal Items	Percent
I. 1. and 2.....	20
I. 3.	30
I. 4., 5., 6.....	10
I. 7., 8.....	40
Total:.....	100

Reimbursable expenses shall be as outlined under 'II Compensation, 3.' in the attached proposal identified under Article 1.

- 2. **Additional Services:** For additional services, as outlined under Article 5., and/or additional services beyond those covered by this agreement, or amendment thereto, compensation shall be computed as follows:

Principal's Time..... \$ 210.00 per hour flat rate
 Plus reimbursable expenses charged as stipulated under Basic Services above.

Specialty Consultants: In the event existing project conditions are uncovered that require input from specialty consultants such as geotechnical or structural specialists, the Project Consultant will retain such consultant(s) as directed and authorized by the Town. Such specialty consultant's charges will be billed as compensation for Additional Services with a 1.25 administration and coordination multiplier.

- B. *Payment:* Project Consultant shall present progress invoices to the Owner for Basic and Additional Services at the end of each month during which substantial services are performed. Progress invoices shall reflect the status of Services (percentage of completion) at time of billing. All payments shall be due upon Owner's receipt of invoice and payable not later than 30 days after Owner's receipt of invoice.
- C. In the event that duration of the Basic Services of this Agreement, through no fault of the Project Consultant, exceeds 15 months, compensation for services provided after 15 months from the date of this agreement shall be as stipulated above under Article 9, A. 2. For remaining Basic Services this compensation shall be in lieu of any portion of the Basic Services fixed fee that remains unbilled 15 months from the date of this agreement.
- D. No deductions shall be made from the Project Consultant's compensation in the event that sums are withheld from payments to construction contractors.

Article 10 Indemnification:

- A. The Project Consultant and the Owner each agree to indemnify and hold the other harmless, including their respective officers, employees, agents or representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the Project Consultant and Owner they shall be borne by each party in proportion to its negligence.

Article 11 Commencement of Services and Termination or Suspension

- A. *Commencement of Services:* The Project Consultant shall commence Services upon receipt of a duly executed copy of this agreement.
- B. *Termination or Suspension:* Either Owner or Project Consultant may terminate this Agreement upon seven days written notice should the other party fail substantially to perform in accordance with the terms of this agreement through no fault of the party initiating the termination. If this agreement or project is terminated or suspended, the Owner agrees to pay Project Consultant for all Basic and Additional Services rendered and Reimbursable Expenses incurred to date of termination or suspension.

Article 12 Dispute Resolution

- A. Owner and Project Consultant agree to submit claims or disputes relating to this Agreement to arbitration. The arbitration shall be conducted per the Construction Industry Arbitration Rules of the American Arbitration Association by an arbitrator acceptable to the parties of this agreement.

Article 13 Ownership of Documents

- A. All instruments of professional service prepared by Project Consultant, including, but not limited to, drawings and specifications, are the property of Project Consultant, and these documents shall not be reused on other projects without Project Consultant's written permission. Project Consultant retains all rights, including the copyright in its documents. Owner or others cannot use Project Consultant's documents to complete this Project with others except with the Project Consultant's written permission or unless Project Consultant is found to have materially breached this Agreement.

Article 14 Governing Law

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

Article 15 Entire Agreement and Severability

- A. This Agreement is the entire and integrated agreement between Owner and Project Consultant and supersedes all prior negotiations, statements or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Project Consultant.

- B. In the event that any term or provision of this agreement is found to be void, invalid or unenforceable for any reason, that term or provision shall be deemed to be stricken from this agreement, and the balance of this agreement shall survive and remain enforceable.

Article 16 No Assignment

- A. Neither party shall assign this Agreement without the other party's written permission.

Article 17 Construction Phase Services

- A. The Project Consultant's services during construction shall commence upon the Town's selection of a construction contractor and shall be limited to assisting the Owner in its day-to-day administration of the Contract(s) for Construction as stated in the attached proposal referred to under Article 1 above and as outlined below:
- B. Notwithstanding any other provisions in this Agreement, Project Consultant shall not control or be responsible for others' means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs, or for others' failure to complete the work in accordance with the plans and specifications.
- C. Construction-phase services will be provided to determine the general progress of the Work and its general conformance with the Contract Documents, but will not include supervision of the construction contractor(s), or of their means, methods, techniques, schedules, sequences or procedures, or of construction safety or any other related programs. Project Consultant maintains the right but not the duty to recommend that Owner reject work that does not appear to conform generally to the plans and specifications. Project Consultant shall not have any liability for recommendations made in good faith.
- D. Certifications of construction contractor pay requisitions shall be a representation to the Owner that, to the best of Project Consultant's knowledge, information and belief, the Work has progressed to approximately the point indicated. Such certification shall be subject to any noted qualifications by Project Consultant and shall not be a representation that Project Consultant has supervised the work, reviewed means, methods, techniques, schedules, sequences, procedures, or construction safety or any other related programs of the contractors, or that Project Consultant has reviewed how or for what purpose the contractor has used or intends to use the contract funds.

Article 18 Miscellaneous Provisions

- A. Nothing in this agreement is intended to create a contractual relationship for the benefit of any third party. There are no intended beneficiaries of this agreement except Project Consultant and Owner.
- B. If this agreement is not executed within sixty (60) calendar days, the offer to perform the described services is withdrawn and shall be null and void.

Article 19 Owner's Responsibility For Maintenance

- A. Owner acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance may result in damage to property or injury to persons. The Owner further acknowledges that, as to between the parties to this Agreement, Owner is solely responsible for the results of any lack of or provision of improper maintenance.

This Agreement entered into as of the date first written above.

OWNER

PROJECT CONSULTANT

Signature

Signature

Printed Name and Title

Printed Name and Title