

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
PASSERO ASSOCIATES  
AND  
TOWN OF PITTSFORD  
SPIEGEL COMMUNITY CENTER MASTER PLAN**

**PROJECT: SPIEGEL COMMUNITY CENTER MASTER PLAN**

**THIS AGREEMENT** is by and between Passero Associates, Engineering, Architecture & Surveying, P.C., having an address at 242 West Main Street, Suite 100, Rochester, New York 14614 (hereinafter referred to as the "CONSULTANT") and Town of Pittsford, having an address at 11 South Main Street, Pittsford, NY 14534 (hereinafter referred to as the "CLIENT").

**1. ASSIGNMENT**

CLIENT wishes to retain CONSULTANT to provide professional engineering advice, consultation and services as described below in consideration of the CLIENT'S payment for said services in the manner set forth below.

**2. BASIC SERVICES OF CONSULTANT**

CONSULTANT shall provide the services described in Schedule "Schedule" based on Preliminary Design Fee Summary of Project Proposal attached as part of this Agreement.

**3. CLIENT'S RESPONSIBILITIES**

CLIENT shall do the following in a timely manner as not to delay the services of CONSULTANT.

3.1 Furnish to CONSULTANT, as required for performance of CONSULTANT's basic services, all data prepared by or services of others including, without limitation, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, inspections of samples, materials and equipment, including appropriate professional interpretations of the foregoing, environmental assessment and impact statements, property instrument surveys, boundary surveys, any easements and right-of-way, topographic and utility surveys, any property survey descriptions that an updated abstract of title may show, an updated abstract of title, zoning, and other land use permit or restrictions, all of which CONSULTANT may use and rely upon in performing services under this Agreement.

3.2 Designate in writing a person to act as CLIENT'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT'S policies and decisions with respect to CONSULTANT'S services for the project. Said representative shall provide needed information and make necessary decisions in a timely manner.

3.3 CLIENT shall grant or obtain free access to the site for CONSULTANT'S personnel and equipment to perform work set forth in this Agreement. CLIENT shall notify any and all possessors of the parcel that CONSULTANT has been given such rights.

**4. PERIOD OF SERVICE**

CLIENT agrees that the signing of this Agreement represents authorization for CONSULTANT to start performing services hereunder, and CONSULTANT shall start performing services within a reasonable period of time after receipt of the signed Agreement, unless CLIENT requests in writing CONSULTANT not proceed with services until a specified date, and complete services within a reasonable time thereafter, currently contemplated by the parties not to exceed six (6) months.

## **5. PAYMENT**

- 5.1 The estimated professional fees for the services to be rendered as described within this Agreement is set forth in the Schedule. CLIENT shall pay CONSULTANT for all services and reimbursable expenses under this Agreement.
- 5.2 Invoices for services and reimbursable expenses shall be submitted, at the CONSULTANT'S option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. In addition, if payment is not received within 60 days, the CONSULTANT has the right to stop work.
- 5.3 In the event there is a change in scope, complexity, character, or duration of the work to be performed by CONSULTANT as set forth in this Agreement, CONSULTANT shall notify CLIENT and obtain approval to provide additional services, and CLIENT shall provide additional compensation to CONSULTANT for such additional services, as agreed to by CLIENT and CONSULTANT.

## **6. TERMINATION OF SERVICES**

This Agreement may be terminated upon 10 calendar days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, the CLIENT shall pay the CONSULTANT for all services, rendered to the date of termination and all reimbursable expenses.

## **7. INSURANCE**

CONSULTANT currently maintains in force the following insurance policies:

- 7.1 Workers' Compensation and Employer's Liability – statutory;
- 7.2 General Liability - Bodily Injury and Property Damage Combined \$2,000,000/\$4,000,000;
- 7.3 Automobile Liability - Bodily Injury and Property Damage Combined - \$1,000,000; and
- 7.4 Professional Liability Insurance (including errors and omissions) – \$2,000,000/\$2,000,000.

If requested, a certificate(s) of insurance shall be provided after acceptance of this Agreement.

## **8. STANDARD OF CARE**

In providing services under this Agreement, the CONSULTANT shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

## **9. HIDDEN CONDITIONS**

A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If the CONSULTANT has reason to believe that such a condition may exist, the CONSULTANT shall request authorization from the CLIENT to investigate such a condition. CLIENT shall pay for all costs associated with the investigation of such hidden condition. If (1) the CLIENT fails to authorize such investigation after due notification, or (2) the CONSULTANT has no reason to believe that such a condition exists, the CONSULTANT shall not be responsible for the existing condition nor any resulting damages to persons or property.

## **10. HAZARDOUS MATERIALS**

Hazardous materials may exist where there is no reason to believe that they could or should be present. CONSULTANT and the CLIENT agree that the discovery of unanticipated hazardous materials that constitutes a changed condition of the scope of work will mandate a renegotiation of the scope of work and associated fee or termination of services under this Agreement if it affects the scope of work. CONSULTANT and the CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for CONSULTANT to take immediate measures to protect human health and safety and/or the environment. CONSULTANT agrees to notify the CLIENT within a reasonable amount of time should unanticipated hazardous materials or suspected hazardous materials be encountered. The CLIENT encourages CONSULTANT to take any and all measures that in CONSULTANT'S professional opinion are justified to preserve and protect the health and/or safety of CONSULTANT'S personnel and the public and/or safety of the environment, and the CLIENT agrees to fully compensate CONSULTANT for the additional cost of said work. In addition, the CLIENT waives any claim against CONSULTANT.

## **11. OWNERSHIP OF DOCUMENTS**

CONSULTANT'S documents other than deliverables (e.g., Master Plan) are instruments of service and copyright protected. Any use of these documents without consent is illegal. All documents prepared or furnished by CONSULTANT by hard copy or in electronic format are and will remain the property of CONSULTANT (including drawings, letters, reports, specifications, investigation photos, estimates, maps, descriptions, opinions, design, etc). CONSULTANT at its discretion has the sole right to retain, store, share or dispose of said documents. CONSULTANT has a Document Retention Policy with an expiring retention/storage period. CLIENT's interested in purchasing their records prior to destruction must do so in writing at the end of CONSULTANT's services. Said documents are not intended or represented to be suitable for reuse by CLIENT or others on any other project. CLIENT shall indemnify and hold harmless CONSULTANT, its professional associates and consultants from all claims, damages, losses and expenses, including attorney fees, arising out of or resulting from CLIENT'S illegal use of said documents.

## **12. GOVERNING LAW**

This Contract shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws rules.

## **13. DISPUTE RESOLUTION**

All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement shall be brought in Monroe County, State of New York. Prior to commencing any litigation, CLIENT agrees to participate in mediation to resolve any disputes.

## **14. MISCELLANEOUS**

14.1 CLIENT and CONSULTANT and their respective partners, successors, executors, administrators, assigns and legal representatives of each are bound by this Agreement to the other party to this Agreement and to the partners, successors, administrators, assigns and legal representatives or such other party in respect to all covenants, agreements and obligations of this Agreement.

14.2 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT and CONSULTANT.

**15. ENTIRE AGREEMENT**

This Agreement, consisting of four (4) pages and the inclusion of all schedules referred to herein, constitutes the entire Agreement between CLIENT and CONSULTANT and supersedes all prior written or oral understandings between the parties in respect to the subject matter of this contract. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written agreement or notification as set forth in this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the \_\_\_\_\_ day of November 2014.

**CONSULTANT**

Passero Associates  
By: John F. Caruso, P.E.  
(Signature)

Name: John F. Caruso, PE, PMP

Title: President

Date: 11/14/14

**CLIENT**

Town of Pittsford  
By: William A. Smith, Jr.  
(Signature)

Name: William A. Smith, Jr.

Title: Town Supervisor

Date: 11-20-2014



FEE PROPOSAL

PRELIMINARY DESIGN FEE SUMMARY

1.0 ARCHITECTURAL DESIGN SERVICES:

Programming.....	\$4,000
Schematic design.....	\$24,000
Construction Cost Estimate.....	\$2,500
Public Meetings (per meeting).....	\$4,000
 Summary of Architectural Design Fees.....	 \$34,500

2.0-6.0 BUILDING ENGINEERING DESIGN SERVICES:

Geotechnical Investigation.....	Coordination/Procurement Included
HVAC, Plumbing, Fire Protection, Electrical Design Services.....	\$6,000
Structural Design Services.....	\$1,000
 Summary of Engineering Design Fees.....	 \$7,000

**TOTAL PRELIMINARY DESIGN FEE .....** \$41,500

REIMBURSABLE EXPENSE ESTIMATE:

Printing, copying, and miscellaneous expenses.....\$1,000

ESTIMATE OF OTHER EXPENSES NOT IN CONTRACT:

Geotechnical Investigations.....\$4,000

**TOTAL EXPENSES.....** \$5,000

