

**CONTRACT AGREEMENT BETWEEN CLIENT AND HELIOS LAND DESIGN**

The following, upon acceptance, shall constitute an Agreement between: **Helios Cape Cod, LLC [Helios Land Design]**  
**PO Box 100**  
**Brewster, Massachusetts 02653**  
**p. 508-237-9000|tib@gis.net**

and the Client:

For the Project:

Agreement dated:

**A. SCOPE OF WORK AND COST ESTIMATE**

Please see Addendum 3 attached for agreed upon Scope of Work.

**B. SCHEDULE**

The anticipated schedule for completion of the land design and planning phases described is as follows:

Site Inventory & Base Plan Development

Conceptual Design

Schematic Design:

Design Development:

Construction Documents:

Landscape Construction:

If services covered by this Agreement have not been completed within fourteen (14) months from the Agreement date, through no fault of Helios Land Design, extension of the Helios Land Design Services shall be compensated on the basis of the hourly rates described in Attachment 1.

**C. OTHER CONSULTANTS**

If the design includes significant storm water, wastewater, retaining wall, or other similar structures, the services of a consulting civil and/or structural engineer will be required. At the request of the Client, Helios Land Design may solicit proposals from these consultants for client review and approval. The Client is responsible for contracts with and payment of other consultants. Helios Land Design does not directly subcontract engineers, architects or other professionals offering scopes of service outside the realm of our landscape design and planning and shall not be held liable for their work in any way.

**D. EXCLUSIONS**

Excluded Services are not a part of Helios Land Design's basic Scope of Work or Additional Services and are the responsibility of others. Excluded Services include, but are not limited to, the following: Subsurface conditions; soil issues including suitability for plant material, soil content, level of compaction and other factors, lot line location and all existing conditions information normally identified and located by a surveyor or engineer, drainage, utilities' location, signage, security, lighting, irrigation, means and methods of construction and project or construction cost estimates.

**E. ADDITIONAL SERVICES**

This Agreement can be amended and/or extended through the inclusion of Additional Services at the joint written agreement of both parties. For Additional Services contract amendments, indicate the agreed upon contract amendment price below and sign:

Additional Cost	Client Signature and date	Jeff Thibodeau signature and date

The following is a brief description of Additional Services agreed to:

**F. COMPENSATION**

**The Client agrees to compensate Helios Land Design according to the rates described in Attachment 1 for a total contract labor fee of \$3,000.00, plus reimbursable expenses**

If the scope of work, fees and conditions described herein are agreeable, please return two signed copies to our office along with a retainer of \$ **TBD**. The retainer will be applied to the last invoice for the project. Payment to Helios Land Design and/or Jeff Thibodeau, owner of Helios Land Design, is the sole responsibility of the Client and is not subject to third party agreements. In the event that the Client defaults on payment, the individual signing the contract on behalf of the Client hereby assumes primary liability and guarantees the payment of all bills submitted. The undersigned, having read and understood the foregoing terms, guarantees performance of the terms and conditions of this Contract as set forth above.

**HELIOS LAND DESIGN**

By: Jeffrey M. Thibodeau, Owner/Principal Date \_\_\_\_\_

**CLIENT**

Accepted by: \_\_\_\_\_ Date \_\_\_\_\_

**G. ADDENDA**

All addenda attached hereto, and initialed below shall be incorporated by reference herein.

Initials: \_\_\_\_\_

**ADDENDUM 1**

**A. FEE FOR PROFESSIONAL SERVICES**

Services will be based upon the following hourly rate schedule:

Jeff Thibodeau	\$75 per hour
Staff level CAD drafts person	\$50 per hour
Administrative Rates	\$50 per hour

Hourly rates will be reviewed periodically, and may be adjusted due to staff promotions, type of services required and cost of living increases. Travel time and mileage charges will be billed at the rates described, with trip calculations originating at our Orleans, Massachusetts office.

**B. REIMBURSABLE COSTS**

Reimbursable expenses are not included in professional fee for services. The following rates shall apply to routine job-related expenses incurred by Helios Land Design.

- Mileage \$0.485/mile
- Fax \$2.00/page
- Color Prints 8.5"x11" \$2.00/page
- Color Prints 11"x17" \$3.00/page
- 24"x36"Plotter Prints \$15/each
- Standard Base Sheet 24"x36" \$10.00
- Standard Base Sheet 11"x17" \$ 5.00
- B/W Photocopying \$ 0.20/page
- Wood Stakes \$5/each
- Telephone \$ N/A

The Client shall be billed for all expenses directly related to the project including disposable field supplies and/or special equipment, as applicable. Other reimbursable expenses not listed above include, but are not limited to, the following:

- Photocopy, reproduction, plotting and/or mounting and binding costs for documents prepared or furnished in connection with this Agreement.
- The cost of commercial carrier and public transportation, lodging, sustenance, car rental, private automobile travel at \$0.485 per mile, parking, and out-of-pocket expenses from Orleans, MA.
- Postage and shipping.
- Long distance telephone charges.
- Photographic services, film, and processing.
- Materials and preparation costs for models, special renderings, maps and documents approved by the Client.

#### C. RESPONSIBILITIES AND INDEMNITY

Helios Land Design will not be responsible for any acts, errors, or omissions of the Client or any architect, engineer, contractor, subcontractor, consultant, or other third party performing services on the project. The Client agrees to indemnify and hold Helios Land Design and Jeff Thibodeau harmless from all claims, damages, losses and expenses (including attorney's fees) arising out of or resulting from any such acts, errors, or omissions of the Client and above mentioned third parties. Helios Land Design is a design and planning company only and does not authorize the means and methods of construction. Helios Land Design shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Helios Land Design's documents. The Client shall at all times indemnify and save harmless Helios Land Design and its officers, agents, subcontractors and employees on account of any claims, damages, losses, litigation, expenses, counsel fees, and compensation arising out of any claims, damages, personal injuries, property losses and/or economic damages sustained by or alleged to have been sustained by any person or entity, caused in whole or in part by the acts, omissions or negligence of the Client, its agents, employees, or subcontractors in connection with the project.

#### D. ACCESS TO SITE

Unless otherwise stated, Helios Land Design will have access to the site for activities necessary for the performance of the services. Helios Land Design will take reasonable precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

#### E. HIDDEN CONDITIONS AND HAZARDOUS MATERIALS

A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If Helios Land Design has reason to believe that such a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after due notification, or (2) Helios Land Design has no reason to believe that such a condition exists, Helios Land Design shall not be responsible for the existing condition or any resulting damages to persons or property. Helios Land Design shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous material of any form.

#### F. OWNERSHIP OF DOCUMENTS

All drawings and other documents, as instruments of service, are copyrighted and shall remain the property of Helios Land Design. The Client will be provided with copies for information and reference for the purpose of which the drawings have been prepared. The client shall not elaborate, change, or incorporate the drawings into other documents or sell or otherwise distribute without specific written agreement of Helios Land Design. Any use with the written approval of Helios Land Design must include the phrase "Copyright, Helios Land Design, Jeff Thibodeau, Owner, 508-237-9000" or otherwise credit Helios Land Design. Any use without such written approval will be a material breach of contract and without liability of Helios Land Design. The client agrees to indemnify and hold harmless Helios Land Design from all claims, damages, losses and expenses (including attorney's fees) arising out of or resulting from unauthorized use. Helios Land Design will retain the project record and drawings related to the services performed for a period of three (3) years following completion of services, during which period the records will be made available to the Client upon request. After three (3) years, the project record and drawings will be available at the discretion of Helios Land Design. Project findings and reports for which payment has not been received within 30 days of invoice date will be the property of Helios Land Design and may not be used by the Client for any purpose. Helios Land Design reserves the right to notify all appropriate regulatory agencies that they no longer stand behind any materials or testimonies submitted under the name of Helios Land Design or Jeff Thibodeau in the event that bills are not paid.

#### G. MARKETING AUTHORIZATION

Helios Land Design shall reserve full rights for use of the project for marketing purposes. This includes, but is not limited to, publication in mass media and trade publications, submissions to award programs, and inclusion in Helios Land Design's marketing materials. Project location and client identity will be withheld at Client's request.

#### H. DISPUTE RESOLUTION

Client and Helios Land Design agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally. Should it become necessary to utilize legal or other resources to collect any or all moneys rightfully due for services rendered under this Agreement, Helios Land Design shall be entitled to full reimbursement of all such costs, including interest and reasonable attorneys' fees, as part of the Agreement should Helios Land Design succeed in such a claim.

#### I. TERMINATION

Either party may terminate this agreement upon ten- (10) days written notice. Upon termination, Helios Land Design will be entitled to compensation under the terms of this Agreement through the date of termination, with any outstanding balance due and payable within fifteen (15) days following the date of termination. There shall be no deductions from Helios Land Design's compensation because of any dispute between the Client and any other party. Helios Land Design shall have no liability because of such suspension of services or termination due to Client's nonpayment.

#### J. PAYMENT SCHEDULE AND TERMS

Fees for professional services and reimbursable costs will be billed approximately bimonthly or monthly and are payable upon receipt. Exact submittal time of these invoices may vary depending upon the nature and stage of the project. Bills not paid within ten (10) days shall accrue a late charge of 1.5% of the principal of the billed amount per month. In addition, work on the project by Helios Land Design may be suspended and data, reports and/or other products withheld, should bills not be paid within 45 days. The client agrees that all statements shall be final and not subject to adjustment unless Helios Land Design is notified in writing of a disputed charge within fifteen (15) days of the statement date. Payment to Helios Land Design is the sole responsibility of the Client and is not subject to third party agreements. In the event that the Client defaults on payment, the individual signing the contract on behalf of the Client hereby assumes primary liability and guarantees the payment of all bills submitted. Helios Land Design shall not be responsible for failure to perform or for delays in the performance of work, which arise out of causes beyond the control and without the fault or negligence of Helios Land Design.

#### K. PROPOSAL DURATION

This proposal is valid for a period of thirty (30) days and will be considered revoked if written acceptance is not received within thirty (30) days from the Agreement date.

### ADDENDUM 2:

#### A. CLIENT'S RESPONSIBILITIES

1. Client agrees to provide Helios Land Design with all information, surveys, reports, and professional recommendations and any other related items requested by Helios Land Design in order to provide its professional services. Helios Land Design may rely on the accuracy and completeness of these items.
2. Client shall furnish the services of the following consultants, if applicable: \_\_\_\_\_
3. Client agrees to advise Helios Land Design of any known or suspected contaminants at the Project site. Client shall be solely responsible for all subsurface soil conditions.
4. Client will obtain and pay for all necessary permits from authorities with jurisdiction over the Project.
5. Client agrees to provide the items described in Addendum 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Helios Land Design's services.

#### B. MISCELLANEOUS PROVISIONS

1. This Agreement is governed by the law of Helios Land Design's principal place of business.
2. This Agreement is the entire and integrated agreement between Client and Helios Land Design and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a separate written instrument signed by both Client and Helios Land Design or by amending this agreement where indicated in Section F of this instrument.
3. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
4. Neither Client nor Helios Land Design shall assign this Agreement without the written consent of the other.
5. Irrespective of any other term in this Agreement, Helios Land Design shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Helios Land Design's documents.
6. Client agrees to indemnify, defend and hold Helios Land Design harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of the Project and/or this Agreement, except that the Helios Land Design shall not be entitled to be indemnified to the extent such damages or losses are found by a court or forum of competent jurisdiction to be caused by Helios Land Design's negligent errors or omissions.
7. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.
8. Client and Helios Land Design waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement. Helios Land Design's waiver of consequential damages, however, is contingent upon the Client requiring contractor and its subcontractors to waive all consequential damages against Helios Land Design for claims, disputes or other matters in question arising out of or relating to the Project.
9. To the extent damages are covered by property insurance during construction, Client and Helios Land Design waive all rights against each other and against the contractors, consultants, agents and employees of the other for such damages. Client or Helios Land Design, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties described in this paragraph.
10. Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance in areas such as, but not limited to, irrigation, lighting, cleaning, deicing and snow removal, security, etc. may result in damage to property or persons. Client further acknowledges and agrees that, as between the parties to this Agreement, Client is solely responsible for the results of any lack of or improper maintenance.

11. Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.
12. If this Agreement is not signed and returned to Helios Land Design within [30] days, the offer to perform the described services may, in Helios Land Design's sole discretion, be withdrawn and be null and void.
13. The Client acknowledges that this contract for services is limited to the provision of landscape design, environmental/land use planning services and that the Client is not retaining Helios Land Design or any of its officers, directors, subcontractors or employees as legal counsel under this Agreement. Services do not include legal consultation or constitute legal advice. Appropriate counsel should be employed where warranted.
14. The invalidity of any portion of this Agreement shall not invalidate the entire agreement. If any portion or clause hereof shall be declared unenforceable or invalid by any court of competent jurisdiction, such portion or clause shall be deemed stricken from the Agreement and remainder hereof shall be binding upon the parties hereto, their heirs, successors and assigns.
15. In entering into this Agreement, Client has relied only upon the warranties or representations (a) set forth in this Agreement; or (b) implied in law. No oral warranties, representations or statements shall be considered a part of this Agreement or a basis upon which the Client relied in entering into the Agreement. No statements, representations, warranties or understandings, unless contained herein, exist between Client and Helios Land Design.

**ADDENDUM 3:**

- A. SCOPE OF WORK (SEE ATTACHED)