

AGREEMENT for PROFESSIONAL SERVICES in regard to the
LEVERETT CEMETERIES, LEVERETT, MASSACHUSETTS

This Agreement made, effective as of April 1, 2018, by and between the TOWN OF LEVERETT, hereinafter referred to as the “Client” and Martha Lyon Landscape Architecture, LLC, (MLLA) a landscape architectural firm of Northampton, Massachusetts, shall constitute the terms and conditions under which MLLA shall provide preservation planning services for the landscapes of Leverett’s twelve historic cemeteries and burial grounds, Leverett, Massachusetts. MLLA will furnish professional services for Client upon the terms and under the conditions contained in this Agreement.

SECTION ONE
PROFESSIONAL SERVICES

A. DEFINITION OF PROFESSIONAL SERVICES

Note: all work on the plan will be performed according to the United States Secretary of the Interior’s *Standards for the Treatment of Cultural Landscapes*.

1. Meet with the Client to review the goal, objectives, scope of work and timeframe for completing the project.
2. Review historical information about each cemetery (including written histories and recently-completed inventory forms).
3. Prepare sketch maps¹ of each cemetery to be used in the illustration of the assessments.
4. Visit each cemetery and document (photographs and written notes) existing conditions.
5. For each cemetery, assess the overall condition, identifying any preservation issues and/or potential challenges to placing interpretive signs. Include an assessment of existing access including parking, pathways, entrances, circulation.
6. Prepare recommendations for preserving each cemetery landscape.
7. Meet with the Client to review assessment and recommendations.
8. Compile assessment report and submit to the Client in printed (1 copy) and electronic (PDF) form.

B. SCHEDULE

MLLA shall begin work on or about April 1, 2018, provided the Client cooperates reasonably. In the absence of unusual circumstances, weather problems etc., MLLA anticipates completion of the project on or before September 30, 2018.

¹ Maps will be compiled using existing data (maps or plans). Where maps or plans do not exist, MLLA will prepare rough sketch maps using assessor’s maps as a base.

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C. FEES & EXPENSES

1. Base Fees. The Client will compensate Martha Lyon Landscape Architecture, LLC a lump sum of \$4,800.00.
2. Reimbursable Expenses. The above fees include all expenses related to the project, including travel, photography, photocopying, and insurance. Additional copies of the assessment document beyond the stated number will be provided at 120% of cost.
3. Additional Services. For approved additional services not otherwise included in the foregoing scope, MLLA and sub-contractors will work hourly at a rate of \$150.00/hour.
4. Payment Terms. MLLA will submit monthly invoices for percentages of work completed. Payment for invoices is due within thirty (30) days of receipt. For accounts delinquent over one month, attorney's fees and other costs incurred in collecting payment shall, at MLLA's sole discretion, be paid by the Client.

~~D. LANDSCAPE ARCHITECT AS CLIENT'S AGENT~~

~~The MLLA acts as the Client's agent only.~~

~~E. LIABILITY OF LANDSCAPE ARCHITECT~~

~~MLLA is not responsible for delays of the contractor, nor for imperfections in the quality of work that may be covered up in the absence of the MLLA or its subcontractors. MLLA has no responsibility for the contractor's means and methods of construction, work site safety procedures, nor for the contractor's failure to construct the project in accordance with the construction documents.~~

~~F. POST COMPLETION ACCESS~~

~~After MLLA's responsibilities under this contract are completed MLLA will have the right to visit the premises upon reasonable notice one time per year for five years to inspect, photograph and show the work to others.~~

SECTION TWO
AGREEMENT TERMS

A. EFFECT OF AGREEMENT

This Agreement shall bind, and the benefits of this Agreement shall inure to, the respective parties to this Agreement, their legal representatives, executors, administrators, successors, and assigns.

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B. GOVERNING LAW

It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Massachusetts.

C. ATTORNEY FEES

In the event that any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorneys' fees.

D. ENTIRE AGREEMENT

This Agreement shall constitute the entire Agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

E. MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

F. PARAGRAPH HEADINGS

The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

G. ASSIGNMENT OF RIGHTS

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

H. TERMINATION

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1. This Agreement may be terminated by either party upon not less than 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.
2. This Agreement may be terminated by the Client upon not less than seven days' written notice to the MLLA in the event that the Project is permanently abandoned. If the Project is abandoned by the Client for more than 30 consecutive days, the MLLA may terminate this Agreement by giving written notice.
3. Failure of the Client to make payments to the MLLA in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
4. If the Client fails to make payment when due to the MLLA for services and expenses, the MLLA may, upon seven days' written notice to the Client, suspend performance of services under this Agreement. Unless payment in full is received by the MLLA within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the MLLA shall have no liability to the Client for delay or damage caused to the Client because of such suspension of services.
5. In the event of termination not the fault of the MLLA, the MLLA shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination expenses as defined in the next paragraph, including time, materials and lost profit for services performed to termination.
6. Termination Expenses are those costs directly attributable to termination for which the MLLA is not otherwise compensated.

I. ARBITRATION

The parties to this Agreement shall submit all disputes, claims, or other matters, in questions between them that arise out of this Agreement to non-binding mediation. Good faith participation in non-binding mediation shall be a condition precedent to either party's right to initiate legal proceedings arising out of this Agreement. Any legal arbitration or mediation shall be held in Franklin County, Massachusetts.

J. INSURANCE

MLLA will maintain all applicable insurance requirements as defined by the Client in the Request for Proposals for the project.

K. COUNTERPARTS

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This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

L. PERFORMANCE

MLLA agrees to perform its services and obligations under this Agreement in accordance with the degree of skill and care ordinarily exercised by similar design professionals performing similar services under similar conditions. MLLA makes no other representations and nor warranties with respect to its services or obligations performed hereunder.

**SECTION THREE
SIGNATURES**

In witness whereof, each party to this Agreement has caused it to be executed on the _____ day of _____, 2018.

Representative, Town of Leverett

Martha H. Lyon, Managing Principal, Martha Lyon Landscape Architecture, LLC