

ANDERSON & KREIGER LLP

GEORGE E. OLSON
golson@andersonkreiger.com
Direct phone: 617-621-6585
Direct fax: 617-621-6685

September 2, 2010

VIA FEDERAL EXPRESS

James Okun
O'Reilly, Talbot & Okun Associates, Inc.
293 Bridge Street, Suite 500
Springfield MA 01103

Steven L. Ledoux
Acton Town Manager
472 Main Street
Acton, MA 01720

Re: Agreement for Environmental Services for the Stow/Martin Street Property

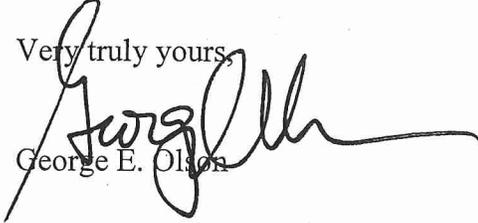
Gentlemen:

Enclosed please find the following:

1. Original execution copies of the "Agreement between Owner and Consultant for Environmental Services for the Stow/Martin Street Property, Acton, MA" with attachments; and
2. Original execution copy of the "Notice to Proceed Form" for the project.

Please feel free to call me at 617-621-6585 if you have any questions.

Very truly yours,


George E. Olson

Enclosure

cc: Douglas A. Muir (w/enclosure)
Stephen D. Anderson (w/enclosure)
Ryan D. Pace (w/o enclosure)

Agreement Between Owner and Consultant for Environmental Services for the Stow/Martin Street Property, Acton, MA

AGREEMENT made as of August 27, 2010

BETWEEN the Owner:

Town of Acton, Massachusetts
472 Main Street
Acton, Massachusetts 01720

and the Engineering, and Design Consultant (hereafter referred to as the "Consultant"):

O'Reilly, Talbot & Okun Associates, Inc.
19 West Main Street, Suite 205
Westborough, Massachusetts 01581

For the following Project:

Environmental Services in connection with a portion of the property at 2 Stow Street/90 Martin Street, Acton, Massachusetts (the "Site")

The Owner and Consultant agree as set forth below.

ARTICLE 1

CONSULTANT'S RESPONSIBILITIES

1.1 CONSULTANT'S SERVICES

1.1.1 The Consultant's services under this Agreement (the "Services") consist of the services to be performed by the Consultant, the Consultant's employees and sub-consultants (collectively the "Consultant") as enumerated in Articles 2 and 3 of this Agreement, and other obligations and responsibilities described as belonging to the Consultant in this Agreement.

1.1.2 The Consultant's Services shall be performed expeditiously, consistent with professional skill and care and the orderly progress of the work required to complete the Project and in accordance with the Project schedule attached hereto as **Exhibit E** including any modifications or updates to such schedule provided by the Owner and agreed to by the Consultant in writing (the "Project Schedule"). Consultant shall not be held responsible for project delays caused in whole or in part by the Owner, its agents, boards committees,

employees, Owner's other consultants or acts of God. The schedule for performance of the Consultant's Services as reflected in the Project Schedule shall not be amended or modified by the Consultant without obtaining the prior written consent of the Owner. During the performance of its Services, the Consultant shall assist, cooperate and work closely with the Owner's representatives (including boards and committees), contractors, consultants and others employed by the Owner in order to facilitate the Owner's review and input and to promote the best interests of the Owner and the Project.

1.1.3 The Consultant's Services shall be performed for the exclusive use of the Owner. Services performed by Consultant under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed, OR implied, and no warranty or guaranty is included or intended in this agreement, or in any report, opinion, document, or otherwise.

1.1.4 The Consultant shall staff the Project with qualified personnel, as proposed in its response to the Owner's Request for Qualifications or Request for Proposals and including the personnel listed on **Exhibit C** ("Key Personnel"). It is expressly understood and agreed that, in retaining the Consultant to perform the Services, the Owner is relying upon the Consultant's agreement that the Key Personnel will be available for, and actively participate in, provision of the Services under this Agreement as appropriate for each stage or phase of the Project. The Consultant shall not remove, replace or substitute Key Personnel without the Owner's prior written approval. In the event one or more of the Key Personnel dies, becomes disabled, terminates his/her employment, or is terminated by the Consultant or its Consultant for cause, the Consultant shall cause such individual(s) to be replaced with individuals approved in writing by the Owner. The Owner may require the Consultant to relieve any of the Key Personnel from any further work under the contract if the Owner in its sole discretion finds that such Key Personnel individual or Consultant does not perform at the applicable skill level, as described in the RFP and the Consultant's proposal, does not deliver work which conforms to the performance standards stated in this Agreement and the Consultant's proposal, or conflicts with Owner personnel and hinders effective and efficient progress on the work of the Project or the assignment for which the member of the Key Personnel is responsible. Nothing herein to the contrary shall relieve the Consultant of its obligation to provide its Services in accordance with Subparagraphs 1.1.2 and 1.1.3.

1.1.5 Consistent with the standard of care set forth in Subparagraph 1.1.3, all drawings, specifications and other documents prepared by the Consultant under this Agreement shall comply with applicable federal, state and local laws, ordinances, codes, rules, and regulations as they may be amended, and other requirements, approvals and permits applicable to the Project as defined by the Owner and agreed to by the Consultant in advance of the performance of the Services (collectively, "Laws and Requirements").

ARTICLE 2

SCOPE OF CONSULTANT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Services to be performed under this Agreement include the Basic Services, as hereafter described, and the Additional Services, to be approved on a task-by-task basis by the Owner as described in Article 3. The Consultant's Basic Services are identified in paragraphs 1 through 4 on page 3 of Owner's Request for Proposals for Environmental Services, dated 6, 2010, and in Section D of Consultant's Technical Proposal, dated August 12, 2010 (copies of both attached as **Exhibit A**), and those other services described in this Article.

Exhibit A contains further definition of the Consultant's Scope of Services under this Agreement.

2.1.2 The Consultant and its employees shall perform at least fifty percent (50%) of all work under the Agreement, measured either by value of services rendered, or by time spent on such services. The identity and scope of work of each Sub-Consultant retained by the Consultant to perform work in connection with Basic Services, and the identity, scope of work and compensation of each Sub-Consultant retained by the Consultant to perform Additional Services, shall be subject to the prior written approval of the Owner, the Owner hereby approving retention of the Consultant's Sub-Consultants identified on **Exhibit B**. Owner shall not unreasonably withhold or delay approval of Sub-Consultants.

2.1.3 During all Phases of the Consultant's Services, the Consultant shall coordinate and schedule the efforts required of its Sub-Consultants and consultants engaged by the Owner ("Owner's Consultants"), and assist the Owner with, and attend as requested by the Owner, customary reviews by municipal authorities provided they fall within the budget for the Services.

2.1.4 The Owner acknowledges that the Consultant is not responsible for the quality and accuracy of the work performed by the Owner's Consultants, who are not part of the Consultant's team. However, if the Consultant discovers or believes that work product furnished by one of the Owner's Consultants is seriously defective or deficient or is not adequately compatible, coordinated or consistent with the Services to be provided by Consultant, the Consultant shall so inform the Owner in writing.

2.1.5 Notwithstanding any other provisions of this Agreement, only the Basic Services described in Section 2.1.1 are authorized as of the date of this Agreement. All subsequent services are not part of the Basic Services as of the date of this Agreement. The Consultant is not authorized to perform the Additional Services unless and until specifically authorized in writing by the Owner. The Owner may at its sole option, and subject to applicable law, request the Consultant to perform the Additional Services. If the Owner does not elect to request the Consultant to perform Additional Services, then the Consultants shall have no obligation to provide those Additional Services.

2.1.6 The Owner may issue change orders to decrease the scope of work included in the Basic Services, or as necessary to conform to available funding amounts and levels. Provided that the Consultant has not initiated work covered by the change order, a credit to the Owner for such decreases in the scope of work shall be calculated in the same manner as compensation to the Consultant for Additional Services provided in Article 11.

2.2 DIGSAFE/HASP PREPARATION, SOIL AND SEDIMENT SAMPLING, REPORT PREPARATION AND OPTIONAL MEETING

2.2.1 The Consultant shall perform the Basic Services for the Project as provided in Section 2.1.1, including: the marking of boring locations and notification of Digsafe; Health and Safety Plan preparation; soil and sediment sampling; report preparation; and attendance at one meeting with Town officials to discuss the results of the environmental assessment prior to the September 28, 2010 Acton Town Meeting.

2.2.2 As warranted by new information, the Consultant shall update the schedule in **Exhibit E**. Such updates shall not change task completion dates, without the Owner's approval.

2.2.3 [Intentionally Deleted]

2.2.4 [Intentionally Deleted].

2.2.5 The Owner has provided to the Consultant certain information concerning existing conditions at the site, including the documents and information listed on **Exhibit G**. The Consultant shall review the information provided by the Owner and notify the Owner of inconsistencies or discrepancies observed by the Consultant. If the Consultant believes that it is necessary or appropriate in connection with the Services to undertake additional surveys or other investigations of conditions at the site, including but not limited to investigations necessary to obtain or confirm the location of concealed utilities or other elements, or additional geotechnical or subsurface investigations, the Consultant shall so notify the Owner, specifically identifying the additional investigations or information deemed necessary by the Consultant. The Owner shall provide such additional investigations or information as are reasonably requested by the Consultant, at the Owner's expense or, at the Owner's option, the Consultant shall engage appropriate sub-consultants to provide such additional investigations or information, and the Owner shall reimburse the Consultant for the costs of such investigations or information as an Additional Service.

2.2.6 [Intentionally Deleted]

2.3 OTHER BASIC SERVICES

2.3.1 The Consultant shall, at the request of the Owner, prepare required documents and plans for, and appear on the Owner's behalf at, administrative or regulatory hearings, presentations or conferences in connection with any matter related to obtaining required Permits and Approvals, all in accordance with the requirements of Section 2.1.1. The Consultant shall also, at the Owner's request, attend sessions or prepare required documents and plans for and make

presentations regarding the Project to Owner's funding sources and such other persons (including the Owner and its committees, boards and staff) as the Owner may require. Owner agrees to compensate Consultant for any other services requested under this section which are not specifically described in Section 2.1.1.

2.3.2 The Consultant shall maintain Project records in an orderly manner according to its customary filing system, including records of the Project correspondence, Project meeting minutes, product data, supplementary Drawings, and such other documents as are prepared or received by the Consultant in connection with the Project. The Owner shall have the right to examine such Project records at reasonable times, and to obtain copies thereof at its own expense.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in Section 3.2, referred to herein as "Additional Services", are not included in Basic Services and they shall be paid for by the Owner, if and as provided in this Agreement, in addition to the compensation for Basic Services, as provided in Article 11. Prior to performing any service which the Consultant claims to be an Additional Service, the Consultant shall give written notice to the Owner that such service is an Additional Service, which notice shall include, as appropriate, identification of the not to exceed amount for the Additional Services provided in Exhibit H, a proposed lump sum or an estimate of the additional compensation payable to the Consultant on account thereof including, without limitation, compensation for preparation of any necessary changes to the Services, and all other costs, fees and other compensation claimed on account of such services, and an estimate of the amount of time required to perform such services and any modifications of the schedule for the Services or the Project Schedule necessitated thereby. Such Additional Service shall not be performed without the Owner's prior written approval. If the Owner's approval is given and a not to exceed amount or a lump sum payment on account of such Additional Services has not been agreed upon, the compensation payable to the Consultant on account of such Additional Services shall not exceed the estimated compensation therefore proposed by the Consultant, nor shall the time for performance of such Additional Services exceed the estimated time proposed by the Consultant, without prior written approval from the Owner. Failure of the Consultant to obtain the Owner's prior written approval for performance of the Additional Services, or for any change in the estimated compensation or time required therefore as specified above, shall constitute a waiver by the Consultant of any claim for any additional compensation or reimbursement with respect to such services. Owner agrees that any delay in the schedule

caused in whole or in part by Owner’s withholding approval of Consultant’s Services is its own responsibility.

3.1.2 Services shall be compensated as Additional Services only to the extent that either (1) they are Additional Services as defined in Section 3.2.1 and requested by the Owner; or (2) if not Additional Services as defined in Section 3.2.1, the need for such Services is not attributable to causes within the Consultant’s reasonable control and do not arise from the negligent errors or omissions, breach of contract, or other negligent or wrongful acts of the Consultant.

3.2 ADDITIONAL SERVICES

The following shall be considered Additional Services:

3.2.1 The additional tasks described in paragraphs 5 through 9 on pages 3-4 of Owner’s RFP and in paragraphs 5 through 9 on pages 3-4 of Consultant’s Proposal, both of which documents are incorporated in Exhibit A

3.2.2 Change orders issued by the Owner to increase the scope of work.

3.2.3 [Intentionally Deleted]

3.2.4 [Intentionally Deleted]

3.2.5 Providing services required because of significant changes in the Project. If the Consultant believes that any proposed change is a significant change in the Project within the meaning of this subparagraph, the Consultant shall so notify the Owner in advance of performing any services related to such change.

3.2.6 Providing financial feasibility or other special studies.

3.2.7 [Intentionally Deleted]

3.2.8 Other than as required as a part of Basic Services under this Agreement, providing services after the Consultant’s responsibility to provide Basic Services has terminated.

ARTICLE 4

OWNER’S RESPONSIBILITIES

4.1 The Owner shall provide sufficient information regarding requirements for the Project, and consult with the Consultant in the Consultant’s development of a program which shall set forth the Owner’s objectives, schedule, constraints and criteria.

4.2 Only the Owner’s Representative, as designated by the Town Manager of Acton from time to time, and such other individuals as may be expressly designated in writing from time to time by the Town Manager of Acton, are authorized to act on the Owner’s behalf with respect to the Project, including, without limitation, delivering the Owner’s authorizations, approvals, requests, revisions or changes described in Subparagraphs 3.1.1, 3.2.1 and 3.2.3. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant’s Services. Until such time as the Town Manager of Acton notifies the Consultant to the contrary, the Owner’s Representative shall be Roland Bartl, AICP, Town Planner.

4.3 The Owner shall furnish the services of the Owner’s Consultants, if any, specified on Exhibit B in a timely manner when and as such services are reasonably required for the implementation of the Project.

4.4 All certificates or certifications to be executed by the Consultant or the Consultant’s Sub-Consultants at the Owner’s request shall be submitted to the Consultant for review and approval at least ten (10) days prior to the date the Consultant is required to execute and return such certificates to the Owner. The Owner shall not request certifications from the Consultant that would require knowledge or services beyond the scope of this Agreement. Certifications by the Consultant and its Consultants shall be in accordance with the standard of professional skill and care set forth in Subparagraph 1.1.3.

4.5 [Intentionally Deleted]

ARTICLE 5

REMEDIATION COST ESTIMATE

5.1 DEFINITION

5.1.1 “Estimated Remediation Cost” shall mean the then-estimated total cost to the Owner for remediation of the Site to achieve a level of No Significant Risk in the most timely, efficient and cost-effective manner.

5.1.2 The Estimated Remediation Cost shall include the cost at then-current market rates of labor and materials, plus a reasonable allowance for a contractor’s overhead and profit.

5.1.3 [Intentionally Deleted]

5.2 RESPONSIBILITY FOR DEVELOPMENT OF ESTIMATED REMEDIATION COST

5.2.1 The Consultant’s estimates of Estimated Remediation Cost represents the Consultant’s judgment as an environmental professional familiar with the environmental remediation industry.

5.2.2 It is recognized, however, that neither the Consultant nor the Owner has control over the cost of labor, materials or equipment, or over contractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Estimated Remediation Cost.

ARTICLE 6

USE OF CONSULTANT’S DRAWINGS, SPECIFICATIONS AND DOCUMENTS

6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Consultant and its Sub-Consultants pursuant to this Agreement (collectively, “Instruments of Service”) are instruments of the Consultant’s service and the Consultant shall be deemed the author of such Instruments of Service and shall retain all common law, statutory and other reserved rights, including the copyright. The Consultant shall not, however, except as provided in this Article 6, use the Instruments of Service for any purpose not relating to the Project without the Owner’s prior written consent. The Owner shall have a perpetual, royalty-free right and license (the “License”) to retain copies, including reproducible copies (and electronic copies on computer disks or other computer memory storage devices) of the Instruments of Service. The License shall include the right to copy, create derivative works based on, distribute and use the Instruments of Service for any purpose, including for the construction, reconstruction, renovation, extension, expansion, repair, maintenance, use and occupancy of this Project, subject to the provisions of this Article 6. The Consultant shall be responsible for obtaining from its Sub-Consultants all license agreements necessary in order for the Consultant to grant the License to the Owner. The Owner’s License shall be effective immediately upon compensation of the Consultant for the relevant Services. The word “Drawings” as used in this Paragraph 6.1 includes the Consultant’s CADD Drawings and any other graphic images of the Drawings contained in computer files stored on computer disks, tapes or other computer memory storage media. The License shall include the right of the Owner to grant limited rights or licenses to use and reproduce applicable portions of the Instruments of Service to the Owner’s contractor’s, representatives and agents for the purposes of the execution of the Project. During the term of this Agreement and continuing after completion of

the Consultant’s Services under this Agreement or other termination of this Agreement, the License shall be irrevocable.

6.2 The Consultant shall have the right to retain copies, including reproducible copies and electronic copies, of the Instruments of Service for information and reference in connection with other projects, and shall have the right to create derivative works based on the Instruments of Service, provided that the Consultant does not (a) provide to any third party a copy of any Instruments of Service in unmodified form or (b) reuse or substantially replicate or copy design elements or features of the Project on other projects in a manner so that such other projects appear to be similar to or derivative from the Project, without the Owner’s prior written consent.

6.2.1 [Intentionally deleted]

6.3 Use or reuse of the Instruments of Service by the Owner other than in connection with the Project without written authorization by the Consultant will be at the Owner’s risk. The Consultant shall not be responsible for changes made in the Instruments of Service by anyone other than the Consultant and its Consultants, or for the Owner’s use of the Instruments of Service without the participation of the Consultant as provided in this Agreement; and the Owner, to the extent permitted by law, shall indemnify and hold harmless the Consultant from any claim, liability or cost arising out of any such use or reuse of, or changes to, the Instruments of Service as described in this Paragraph 6.4.

ARTICLE 7

DISPUTE RESOLUTION

7.1 Unless otherwise agreed, the Consultant shall carry on the Services to be performed under this Agreement in accordance with the terms hereof notwithstanding any claim, dispute or other matter in question arising out of or relating to this Agreement or breach thereof. All such claims or disputes or other matters shall be submitted to a court of competent jurisdiction in Middlesex County, Massachusetts, subject to any applicable statute of limitations, unless the parties mutually agree to use mediation, arbitration or other alternative dispute resolution methods. During the pendency of any dispute resolution process, the Owner shall continue to make payments to the Consultant for all amounts due hereunder, except as provided in Paragraph 10.2.3.

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by the Owner upon not less than seven (7) days’ written notice should the Consultant fail substantially to perform in accordance with the

terms of this Agreement through no fault of the Owner and such failure is not cured within seven (7) days after receipt of such notice. Any termination of this Agreement hereunder shall not affect or impair the right of the Town to recover damages occasioned by any default of the Consultant or to set off such damages against amounts otherwise owed to the Consultant.

8.2 If the Project is suspended by the Owner for more than one hundred and twenty (120) consecutive days, the Consultant shall be compensated for Services performed prior to notice of such suspension within 45 days of the Notice of Suspension. If the Project is thereafter resumed, the Consultant shall not be entitled to additional compensation for the already compensated work as a result of such interruption and resumption of the Consultant's Services. Provided that the Project is suspended or the Consultant's Services are suspended for more than one hundred eighty (180) consecutive days, the Consultant may terminate the Agreement by giving not less than seven (7) days written notice.

8.3 This Agreement may be terminated by the Owner for its convenience and without cause upon not less than ten (10) days' written notice to the Consultant. In the event the Owner so terminates this Agreement without cause, the Consultant shall be compensated for any unpaid and undisputed amount owed for Services performed prior to termination, together with Reimbursable Expenses, as described in Paragraph 10.1 hereof, incurred prior to termination.

8.4 For purposes of this section, it is acknowledged that the Consultant's services under the contract are personal services and may not be assumed by or assigned by a trustee in bankruptcy.

8.5 In the event of termination, the Consultant shall promptly deliver to the Town copies of all Instruments of Service developed under this Agreement to the time of termination provided Consultant has been compensated for the same.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the laws of Massachusetts.

9.2 To the maximum extent permitted by law, the Consultant, at its expense, shall indemnify, hold harmless and defend with counsel acceptable to the Owner (such acceptance of counsel to not be unreasonably withheld), the Owner and any of its or their boards, committees, subcommittees, commissions and other affiliated or related entities and/or its

officials, members, directors, officers and employees from and against all claims, causes of action, suits, demands, losses, damages, liabilities and expenses (including reasonable attorneys' fees) to the extent the same arise out of or result from the misconduct, breach or negligence (including without limitation negligent professional acts, errors or omissions) of the Consultant or its Sub-Consultants in performance of Services under this Agreement. The Consultant shall cause this indemnity obligation to be insured under its commercial general liability and professional liability insurance policies, as applicable, to the extent that such obligation is covered by generally available policy terms or endorsements and subject to the terms, conditions and exclusions of the Consultant's insurance policies. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the benefit of the Owner or such other indemnitees that would otherwise exist. This indemnification and hold harmless agreement shall be limited by the available insurance described in Paragraph 12.1 of this Agreement. The Consultant shall include in its agreements with its Sub-Consultants an indemnification provision by which each Sub-Consultant agrees to indemnify the Consultant.

9.3 The Owner and the Consultant waive all rights against each other and against the contractors, consultants, agents and employees of the other for property damage to the extent such property damage is covered by property insurance maintained by the Owner or the Consultant, as applicable, and only to the extent that such waiver shall not result in a denial or reduction in coverage under such property insurance policies. The Owner and the Consultant shall each require similar waivers from their contractors, consultants and agents.

9.4 This Agreement shall be binding upon and inure to the benefit of the Owner and Consultant and their respective successors, assigns and legal representatives. Neither the Consultant nor the Owner shall directly or indirectly assign this Agreement without the written consent of the other.

9.5 This Agreement for this Project represents the entire and integrated agreement between the Owner and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Consultant.

9.6 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Owner or the Consultant.

9.7 [Intentionally Deleted]

9.8 Any and all notices, demands, consents, approvals, requests, offers, elections and other communications required or permitted under this Agreement ("notice") shall be given in writing and the same shall be delivered either in hand, by

telecopier or email with hard copy confirmation of transmission, or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all delivery charges prepaid (if by Federal Express or similar carrier). If, pursuant to the provisions of this Agreement, a notice is required to be given or delivered on or before a specific date which is not a business day, the deadline for giving such notice shall automatically be extended to the next following business day.

All notices required or permitted to be sent hereunder shall be deemed to have been given for all purposes of this Agreement upon the date of confirmed transmission, in the case of a notice by telecopier or email, and, in all other cases, upon the date of receipt or refusal of delivery, except that if a notice is so given on a day which is not a business day, such notice shall be deemed to have been given on the next following business day.

All such notices shall be addressed, if to the Owner to:

Town Manager
Town of Acton
472 Main Street
Acton, Massachusetts 01720

and if to the Consultant, to:

James D. Okun, LSP
O'Reilly, Talbot & Okun Associates, Inc.
19 West Main Street, Suite 205
Westborough, Massachusetts 01581

By notice given as herein provided, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice and each shall have the right to specify as its address any other address within the United States of America.

9.9 No action or inaction by the Owner or the Consultant pursuant to this Agreement or with respect to the Project shall operate as a waiver of any rights under this Agreement, except as expressly provided herein.

9.10 No official, member, director, officer, consultant, trustee, joint venturer, partner, beneficiary, employee, volunteer, agent or representative of the Owner or any affiliate or related entity of the Owner shall be individually or personally liable to the Consultant under any term or provision of this Agreement for the Owner's payment obligations or otherwise, or because of any breach hereof, or otherwise liable in connection with any claim or matter arising out of this Agreement or the Project, the Consultant agreeing to look

solely to the assets of the Owner for the satisfaction of any liability of the Owner hereunder. In no event shall the Owner be liable to the Consultant except for payment for Services rendered pursuant to and in accordance with this Agreement, nor shall the Owner or any affiliate or related entity of the Owner ever be liable to the Consultant for indirect, special, incidental or consequential damages, or for damages or loss from causes beyond the Owner's reasonable control.

9.11 Duties, responsibilities and limitations of authority of the Consultant under any provision of this Agreement shall not be restricted, modified or extended except by the written agreement of the Owner and the Consultant.

9.12 The Owner's review, approval, acceptance or payment for Services under this Agreement shall not operate as a waiver of any rights under this Agreement. The rights and remedies of the Owner provided for under this Agreement are in addition to and not in limitation of any other rights or remedies provided by law or in equity. The Owner may assert a right to recover damages either during or after performance of this Agreement.

9.13 If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be deemed affected thereby.

9.14 Under this Agreement, the Consultant is obligated to ensure that the Project be conducted, and that all services and other work performed by the Consultant under the Agreement shall be performed so as to comply with applicable federal, State and municipal laws, regulations, codes, and ordinances. In particular, without limitation, the Consultant agrees to comply with regulations pertaining to approvals for state grants.

9.15 The provisions of Article 6, Article 7, Paragraph 9.2, Paragraph 9.8, Paragraph 9.9, Paragraph 9.10, Paragraph 12.1, and any other provisions of this Agreement that by their terms or by implication are intended to continue in effect after the expiration (full performance) or earlier termination of this Agreement, shall survive the expiration (full performance) or termination for any reason of this Agreement.

ARTICLE 10

PAYMENTS TO THE CONSULTANT

10.1 REIMBURSABLE EXPENSES

10.1.1 Reimbursable Expenses, which are in addition to compensation for Basic and Additional Services, shall mean those expenses reasonably incurred by the Consultant and the Consultant's employees and Consultants in the interest of the Project and described in Subparagraphs 10.1.1.1 through 10.1.1.3 below; provided, however, that in no event shall the

Owner have any obligation to reimburse the Consultant for any expenses incurred (i) in connection with the preparation of the Consultant's application or proposal to the Owner or promotional or marketing material; or (ii) more than ninety (90) days prior to presentation to the Owner of the Consultant's application for payment of such expenses.

10.1.1.1 Fees paid in connection with Permits and Approvals for the Project.

10.1.1.2 [Intentionally Deleted]

10.1.1.3 Premium expense for additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that specified in Article 12.

10.1.2 Except as included as part of Consultant's Fee Proposal included in Exhibit H, the following expenses shall not be considered Reimbursable Expenses, and are included in the Consultant's compensation for Basic Services: (i) costs for computer use, data and word processing, facsimile transmission, routine duplication, etc., (ii) travel and related expenses, unless expressly approved in advance by the Owner in special circumstances, (iii) expenses for telecommunications services (including telephone and telecopier, long distance and local service charges, cellular telephone charges, pagers and other wireless telecommunications devices, etc.), (iv) costs of consumable office supplies, (v) interest and penalties, (vi) attorneys fees, and (vii) any other costs or expenses not specifically listed in subparagraph 10.1.1 or specifically approved in advance by the Owner.

10.2 PAYMENTS ON ACCOUNT OF SERVICES

10.2.1 Payments on account of Basic Services, Additional Services and Reimbursable Expenses shall be made monthly and in accordance with Article 11.

10.2.2 The Consultant shall submit to the Owner a monthly request for payment, in form and substance satisfactory to the Owner. Each request for payment shall set forth the amount due on account of Basic Services, Additional Services and Reimbursable Expenses for the preceding month and shall contain a detailed breakdown of each amount, the sum of all prior payments, and such other information required under this Article 10. The Consultant's request for payment shall include a description of Services performed under the task or tasks in such form and detail and with such supporting data as the Town of Acton may reasonably require showing the computational basis for all charges. The Consultant shall keep records pertaining to services performed employing sound bookkeeping practices and in accordance with generally accepted accounting principles.

10.2.3 The Owner shall review each such request for payment, and may make such reasonable exceptions or adjustments as the Owner considers necessary or appropriate. Within thirty (30) days after submission of each such request for payment to the Owner or as expeditiously as possible, if longer than thirty (30) days, the Owner shall make payment to the Consultant in the amount approved, subject to Subparagraph 10.2.4 below. The cumulative amounts of such progress payments to the Consultant shall not exceed the amount specified in Subparagraph 11.1.1.

10.2.4 [Intentionally Deleted]

10.2.5 Payments under this Agreement will be made only to the Consultant. The Consultant shall be responsible for payment of any of its Sub-Consultants. The Consultant shall deliver with each request for payment a release in a form acceptable to the Owner from each Sub-Consultant affirming that the Consultant has been or will be paid by the Consultant for services rendered and covered by the request for payment.

10.2.6 The Consultant shall not be paid for any services not included in the contract scope of work, such as additional work that should have been anticipated by the Consultant in the preparation of its proposal, as reasonably determined by the Town Manager, or any services made necessary by the fault or negligence of the Consultant or any of its Sub-Consultants.

10.2.7 Any provision of this Agreement to the contrary notwithstanding, the Owner shall not be obligated to make any payment (whether a progress payment or final payment) to the Consultant hereunder if any one or more of the following conditions exists:

1. The Consultant is in material default of any of its obligations hereunder;
2. Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, that payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement; or
3. The Consultant has failed, without good cause, to make payments promptly to its Sub-Consultants or others engaged in connection with performance of Services for which the Owner has made payment to the Consultant.

10.3 No progress payment made shall be construed as final acceptance or approval of that part of the Services to which such progress payment relates, or relieve the Consultant of any of its obligations hereunder.

10.4 When the Consultant receives payment from the Owner, the Consultant shall promptly make payment to each Sub-Consultant whose work was included in the Services for which payment was made by the Owner. The Consultant shall promptly pay all bills for labor and materials performed and furnished by others in connection with the performance of services.

10.5 The acceptance of final payment shall constitute a waiver by the Consultant of all claims except those previously made in writing and identified by the Consultant as unsettled at the time of its final request for payment.

10.6 CONSULTANT’S ACCOUNTING RECORDS

10.6.1 The Consultant shall keep detailed records of all Reimbursable Expenses and all charges for Basic Services and Additional Services to the extent that such charges are calculated on the basis of billable hourly rate(s) of the applicable employee(s). Such records shall be kept in accordance with generally accepted accounting principles and in accordance with applicable law, and shall be made available to the Owner or the Owner’s authorized representative at the Consultant’s office or at another mutually agreeable location upon seven (7) days prior notice during the term of this Agreement and thereafter as provided herein or required by law. If any audit, inspection or examination performed by or on behalf of the Owner discloses overcharges (of any nature) by the Consultant to the Owner, the Consultant shall immediately rebate to the Owner the total amount of such overcharge.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Consultant as follows:

11.1 BASIC COMPENSATION

11.1.1 For Basic Services as described in Article 2, Basic Compensation shall not exceed Twelve Thousand One Hundred and Forty-five Dollars (\$12,145.00), payable on a monthly basis for actual services performed (See Table 1 attached in Exhibit H).

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 At the option of the Owner, compensation to the Consultant on account of Additional Services shall be on the basis of (i) the not to exceed amounts for such Additional Services specified in “Attachment A – Price Proposal Form” included in Exhibit H hereto, or, for Additional Services not addressed in Exhibit H, (ii) an agreed lump sum amount, or

(ii) the hourly billing rates and unit prices set forth in **Exhibit D**, which billing rates and unit prices are all-inclusive, or other billing rates and unit prices agreed upon by the Owner and the Consultant. Whenever possible, and unless the Owner otherwise approves in writing, compensation to the Consultant on account of Additional Services shall be on the basis of the not to exceed amounts in Exhibit H. As used herein “direct personnel expense” means the direct salaries paid to the Consultant’s and its Sub-Consultants’ personnel engaged in performance of the services. The multiplier specified above includes all costs of mandatory and customary contributions and benefits related to such direct salaries, such as employment taxes and other statutory employee benefits, insurance, employee retirement plans and similar contributions and benefits. Unless otherwise stated in the Owner’s written authorization for the performance of Additional Services, the Consultant may request payment for Additional Services on a monthly basis based upon the services performed and costs incurred by the Consultant.

11.2.2 For Additional Services of Consultants, the Consultant’s compensation shall be equal to the amounts billed to the Consultant for such services, subject to the provisions of Subparagraph 11.2.1.

11.2.3 [Intentionally Deleted]

11.3 REIMBURSABLE EXPENSES

11.3.1 For Reimbursable Expenses, as described in Paragraph 10.1, the reimbursement amount payable by the Owner shall be equal to a multiple of 1.10 times the actual direct cost. In the case of Reimbursable Expenses incurred by Sub-Consultants, only one mark-up shall be payable.

11.3.2 [Intentionally Deleted]

ARTICLE 12

OTHER CONDITIONS OR SERVICES

12.1 The Consultant shall maintain at the Consultant’s expense, and shall file with the Owner a certificate evidencing, professional liability insurance issued by an insurance company admitted to conduct business in Massachusetts or a non-admitted company listed on the Massachusetts Insurance Commissioner’s approved list, and otherwise acceptable to the Owner having minimum limits of \$500,000.00 for each claim and \$1,000,000.00 annual aggregate. Such professional liability insurance shall have a deductible not in excess of \$250,000, for which the Owner shall not be responsible, shall cover the negligent professional errors, omissions and acts of the Consultant and/or of any Sub-Consultant or other person or business entity engaged by the Consultant to provide services in connection with this Agreement or for whose performance the Consultant is legally liable, and shall remain

in full force and effect from the date hereof until substantial completion of the Project and for a period of two (2) years following completion of the Consultant's services pursuant to this Agreement, provided that such insurance remains available at a commercially reasonable cost. The Consultant shall also maintain general liability insurance including contractual liability coverage with a combined single limit not less than \$1,000,000.00 each occurrence and \$2,000,000.00 annual aggregate. Such policies and certificates shall each include an endorsement stating that the issuing company shall mail at least thirty (30) days prior written notice to the Owner before cancellation, expiration without renewal, or material amendment of such policy, except that at least ten (10) days prior written notice shall be given to the Owner in the event of cancellation for non-payment of premium. The Consultant shall also maintain statutory workers' compensation coverage and occupational disease coverage in accordance with the laws of the Commonwealth of Massachusetts and the laws of any other jurisdiction to which the Consultant may be subject. The Consultant shall require its Sub-Consultants to maintain similar insurance coverages as the Consultant is required to maintain under this Agreement, in amounts acceptable to the Owner. The Owner shall be included as an additional insured on the Consultant's insurance policies, except for professional liability and workers' compensation. The Consultant shall deliver signed original insurance certificates to the Owner evidencing all of the foregoing insurance at the execution of this Agreement and on an annual basis thereafter, and shall, if requested by the Owner, deliver to the Owner originals or certified copies of the required insurance policies.

12.2 The Consultant shall not employ additional sub-consultants not identified in **Exhibit B**, nor subcontract, assign or transfer any part of its Services or other obligations under this Agreement without the prior written consent of the Owner. Written consent shall not in any way relieve the Consultant from its responsibility for the professional and technical accuracy and the coordination of all data, designs, Drawings, Specifications, estimates and other work or materials furnished hereunder.

12.3 The Consultant agrees to adhere to the time requirements and schedules included in this Agreement to the extent possible; to perform its services as expeditiously as is consistent with the standard of professional skill and care required hereby; and to perform its services in coordination with the operations of the Owner of this Project and with any of the Owner's Consultants in connection with the Project. It shall be the obligation of the Consultant to request any information necessary to be provided by the Owner for the performance of the Consultant's services.

12.4 [Intentionally Deleted]

12.5 The Consultant agrees as follows:

12.5.1 In connection with performance of the Services under this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, gender or disability. The Consultant shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the "Commission"), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

12.5.2 In connection with the performance of Services under this Agreement, the Consultant shall not discriminate in its relationships with sub-consultants or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, gender or disability. In all the Consultant's solicitations for bids or proposals it shall notify in writing each potential consultant or supplier of the Consultant's obligations under this Paragraph 12.5, and it shall be a term of each contract with a consultant or supplier in connection with the performance of the Services under this Agreement that the consultant or supplier shall be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Consultant hereunder.

12.5.3 The Consultant shall comply with all applicable Laws and Regulations pertaining to non-discrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

12.5.4 The Consultant's non-compliance with any provision of this Paragraph 12.5 shall constitute a material breach of this Agreement, for which the Owner may, in its discretion, upon failure to cure said breach within thirty (30) days after written notice thereof, terminate this Agreement upon ten (10) days written notice. The Consultant shall indemnify and hold harmless the Owner from any claims and demands of third parties resulting from the Consultant's non-compliance with any of the provisions of this Paragraph 12.5.

12.6 The Consultant shall keep confidential and shall not, without the Owner's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its work hereunder.

12.7 By execution of this Agreement, the Consultant incorporates herein by reference the truth-in-negotiation certificate filed with the Owner, and hereby confirms:

12.7.1 The wage (salary) rates and other costs used to support the Consultant's compensation are accurate, complete and current at the time of contracting; and

12.7.2 The Consultant agrees that the compensation hereunder may be adjusted within one (1) year of final

completion of this Agreement to exclude any significant amounts if the Owner determines that the compensation was increased by such amounts due to inaccurate, incomplete or non-current wage (salary) rates or other costs.

12.8 By execution of this Agreement, the Consultant, pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, certifies under the penalties of perjury that it has, to the best knowledge and belief of the undersigned on the Consultant’s behalf, filed all state tax returns and paid all state taxes required under law.

12.9 The Consultant acknowledges that the Owner is a municipality for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the Consultant agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Consultant based on said statute.

12.10 The Consultant hereby certifies that it has not given, offered or agreed to give, any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.

12.11 The Consultant hereby certifies that none of its Sub-Consultants or subcontractors have given, offered or agreed to give, any gift, contribution or offer of employment to the Consultant or to any other person, corporation or entity as an inducement for, or in connection with, the award to the Consultant or subcontractor of a contract by the Consultant.

12.12 The Consultant hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Consultant, has been retained or hired to solicit for, or in any way assist, the Consultant in obtaining this Agreement upon an agreement or understanding that such

a person, corporation or other entity be paid a fee or other consideration contingent upon the award of the Agreement.

12.13 The Consultant hereby certifies that neither the Consultant nor any of its affiliates is currently debarred or suspended by the Commonwealth of Massachusetts or any of its subdivisions, under any Commonwealth law, including, but not limited to Section 29F of Chapter 29, or Section 25C of Chapter 152.

12.14 [Intentionally Deleted]

12.15 This agreement includes the Exhibits listed below, all of which are appended hereto and are as fully a part of this Agreement as if set forth or repeated herein.

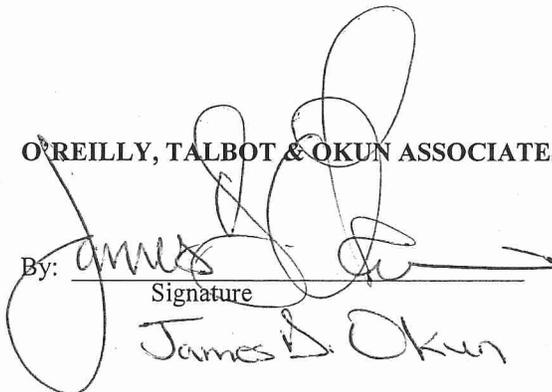
- Exhibit A** Scope of Services, including Target Completion Date and Timeline
- Exhibit B** - Consultant’s Consultants and Owner’s Consultant’s
- Exhibit C** - Key Personnel of Consultant and Primary Consultants
- Exhibit D** - Schedule of Hourly Billing Rates and Unit Prices
- Exhibit E** - Project Schedule
- Exhibit F** - Program Materials and Other Materials Provided by Owner
- Exhibit G** - Existing Data on Site and Subsurface Conditions (where available)
- Exhibit H** - Consultant’s Fee Proposal

This Agreement entered into as of the day and year first written above.

TOWN OF ACTON

O'REILLY, TALBOT & OKUN ASSOCIATES, INC.

By: _____
Steven Ledoux, Town Manager

By:  _____
Signature
James D. Okun

This Agreement entered into as of the day and year first written above.

TOWN OF ACTON

By: 

Steven Ledoux, Town Manager

O'REILLY, TALBOT & OKUN ASSOCIATES, IN

By: _____
Signature

EXHIBIT A

EXHIBIT A

REQUEST FOR PROPOSALS AND TECHNICAL PROPOSAL, ENVIRONMENTAL SERVICES

Stow/Martin Street Property



Planning Department

REQUEST FOR PROPOSALS
(RFP)

ENVIRONMENTAL SERVICES
ACTON, MA

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov

Pursuant to MA General Law c. 30B, the Town of Acton, MA, is requesting proposals for environmental services in connection with a portion of the property at 2 Stow Street / 90 Martin Street, Acton, Massachusetts (Acton Assessors Map H-2, Parcels 95 and Map H-2A Parcel 62). Prior environmental assessments of the property consist of the following:

- An ASTM Phase I Environmental Site Assessment prepared by O'Reilly, Talbot & Okun Associates, Inc., dated March 24, 2010 which identified a Recognized Environmental Condition (REC) on the eastern portion of 2 Stow Street property formerly occupied by the Moore & Burgess Co. and Morocco Factory and the adjoining northern shore of Mill Pond located south of the former factory; and
- An ASTM Phase II Environmental Site Assessment prepared by Groundwater & Environmental Services, Inc. dated June 7, 2010 which identified a 120-day reportable condition consisting of certain metals (arsenic, chromium and lead) and polynuclear aromatic hydrocarbons (PAHs) principally in shallow soils along with concentrations of certain metals (chromium, fluorine and lead) in pond sediments which exceed DEP's "Freshwater Sediment Screening Criteria."

The site assessment reports are available at: <http://doc.acton-ma.gov/dsweb/View/Collection-3491>

Username: mcprfp

Password: marocco1

The purpose of the present RFP is to engage a Licensed Site Professional and firm to perform further environmental assessment actions and to recommend containment and removal actions as may be necessary to achieve the most expeditious and cost-effective permanent solution for this reportable condition consistent with the Massachusetts Contingency Plan (MCP) and the future use of the property as publicly-owned open space, recreation and conservation land.

Each RFP Respondent must identify any subsidies, grant awards, reimbursements or other funds available from federal, state, public or private sources for which the Town and/or the land owner is or may be eligible to perform these assessment actions and/or any containment and removal actions as may be necessary to achieve a permanent solution.

Under this RFP, each RFP Respondent must submit an original, five (5) print copies, and one electronic copy (pdf) of its response, consisting of a separate price proposal and technical proposal, to the **Town Manager, Town Hall, 472 Main Street, Acton, MA 01720** by the due date specified below. Each proposal must be delivered in a sealed package, plainly marked on the outside "RFP Response – Environmental Services – Stow/Martin Street Property." Within the sealed package must be contained in separate sealed and marked envelopes (a) the price proposal, and (b) the technical proposal.

The Town reserves the right to reject any or all proposals, waive any informality in the proposals, and to accept the proposal or proposals deemed to be in the best interests of the Town. The Town may award a contract, if at all, to the responsive and responsible Proposer whose proposal is deemed by the Town to be the most advantageous to the Town, taking into consideration price and the evaluation criteria included in this RFP.

This RFP is available in the Acton Planning Department, Town Hall, 472 Main Street, Acton, MA 01720, (978) 264-9636.

RFP Released: August 6, 2010
Proposals Due: August 20, 2010 at 4:00 PM,
Town Manager's Office, Town Hall, 472 Main Street, Acton MA 01720.
Completion Date: September 24, 2010 for some scope elements – see pages 3 and 4.
Full completion preferred within 4 months of award of contract.

Steven Ledoux
Town Manager
August 6, 2010

INTRODUCTION AND BACKGROUND

Depending on the results of the investigation performed pursuant to this RFP, the Town of Acton intends to purchase approximately 9.6 acres of the approximately 13.2-acre property, 2 Stow Street / 90 Martin Street, Acton, Massachusetts (Acton Assessors Map H-2, Parcels 95 and Map H-2A Parcel 62) for open space, recreation and conservation purposes. Within the area to be purchased are the subject former factory site and an abutting portion of Mill Pond, a dammed water body. Abutting the site to the east is a former railroad right-of-way, currently owned by the Town of Acton, which is to be developed into the Assabet River Rail Trail. Much of the subject property is in agricultural use and this use is expected to continue for the foreseeable future.

Anticipated future public uses of the acquired property include passive and active recreation, such as walking, cross country skiing, and canoeing on Mill Pond. Also planned is a formal trail head access to the future Assabet River Rail Trail, which may include a parking lot on the subject property. Other possible future uses of the land, although not likely in the precise location of the former factory, are playing field(s) and a playground.

RELEVANT MATERIALS AVAILABLE FOR REVIEW OR USE

Provided with this RFP are copies of the following environmental assessments of the subject property:

- An ASTM Phase I Environmental Site Assessment prepared by O'Reilly, Talbot & Okun Associates, Inc., dated March 24, 2010 which identified a Recognized Environmental Condition (REC) on the eastern portion of 2 Stow Street property formerly occupied by the Moore & Burgess Co. and Morocco Factory and the adjoining northern shore of Mill Pond located south of the former factory; and
- An ASTM Phase II Environmental Site Assessment prepared by Groundwater & Environmental Services, Inc. dated June 7, 2010 which identified a 120-day reportable condition consisting of certain metals (arsenic, chromium and lead) and polynuclear aromatic hydrocarbons (PAHs) principally in shallow soils along with concentrations of certain metals (chromium, fluorine and lead) in pond sediments which exceed DEP's "Freshwater Sediment Screening Criteria."

PURPOSE OF ENVIRONMENTAL SERVICES

The purpose of this RFP is to engage a Licensed Site Professional and firm to perform further environmental assessment actions and to recommend containment and removal actions as may be necessary to achieve the most expeditious and cost-effective permanent solution for this reportable condition consistent with the Massachusetts Contingency Plan (MCP) and the future use of the property as publicly-owned open space, recreation and conservation land. These additional assessment actions to be performed consistent with the MCP may include, without limitation:

1. Preparation of a Release Notification Form (if necessary);
2. Additional sampling to determine the nature and extent of the soil and sediment contamination;
3. Evaluation of remedial alternatives (such as soil removal or capping) if necessary to achieve a level of no significant risk;
4. Formulation of a schedule, cost estimates, and recommendations for site remediation to achieve a level of no significant risk in the most timely, efficient, and cost-effective manner;
5. Evaluation to determine if the site, or contaminants present on the disposal site, fall under the MCP's coal and wood ash exemption;

6. A risk characterization to determine the level of risk and the need (if any) for site remediation;
7. Preparation of a bid specification for the performance of the selected remedial alternative (if any) to be included in a future invitation for bids for the performance of such work if required;
8. Preparation of any necessary closure documents including a Response Action Outcome Statement and an Activity and Use Limitation (if appropriate); and
9. Such other assessment and reports as may be necessary under the MCP.

Each RFP Respondent should provide for the completion of the above items 1. through 4. by September 24, 2010. This information is required for a Special Town Meeting scheduled on September 28, 2010 where this matter will be considered.

Each RFP Respondent must propose strategies to achieve the most expeditious and cost-effective permanent solution for this reportable condition consistent with the Massachusetts Contingency Plan (MCP) and consistent with possible future uses of the property as publicly-owned (1) open space and conservation land with passive recreation, (2) active recreation land, or (3) agricultural land, including possible use as community gardens. The Town will be interested in recommendations regarding future uses which may lead to a more expeditious and cost-effective Permanent Solution pursuant to the MCP.

In addition, each RFP Respondent must identify any subsidies, grant awards, reimbursements or other funds available from federal, state, public or private sources for which the Town and/or the land owner is or may be eligible to perform these assessment actions and/or any containment and removal actions as may be necessary to achieve a permanent solution.

PROPOSAL SUBMISSION REQUIREMENTS

Each proposal must be delivered in a sealed package, plainly marked on the outside "RFP Response – Environmental Services – Stow/Martin Street Property." Within the sealed package must be contained in separate sealed envelopes (a) the technical proposal, and (b) the price proposal.

- **Technical Proposal**

An original and five (5) print copies, and one electronic copy (pdf) of the technical proposal must be submitted within the RFP Response package in a sealed envelope clearly marked:

Technical Proposal, Environmental Services – Stow/Martin Street Property
Respondent's Name: _____.

The technical proposal must contain the following information:

- A. Cover Letter

A cover letter introducing the RFP Respondent (firm) and the proposed RFP Respondent's team, acknowledging the receipt of any and all Addenda to the RFP by date and number, and identifying the name, title, address and telephone number of (a) the Licensed Site Professional, (b) the project manager (if different from the LSP) and (c) the person with authority to negotiate and contractually commit to all services.

- B. Table of Contents

- C. Statement of Project Understanding and Approach

A statement, not exceeding 2 pages, that describes the RFP Respondent's understanding of and approach to the technical aspects of the requested work and the various goals that must be addressed and achieved.

D. Scope of Services

- a. A detailed proposed Scope of Services incorporating Respondent's strategy to achieve the most expeditious and cost-effective permanent solution for the reportable condition at the site consistent with the Massachusetts Contingency Plan (MCP) and the future use of the property as publicly-owned open space, recreation and conservation land, and rail trail access including possible incorporation of a parking area.
- b. A schedule of hours, which the RFP Respondent expects to spend on the various project tasks and sub-tasks, broken down by project team member.
- c. A project schedule with tasks and subtasks and contingency plans that define clear phases or milestones with proposed dates for completion of each.
- d. Identification of any subsidies, grant awards, reimbursements or other funds available from federal, state, public or private sources for which the Town and/or the land owner is or may be eligible to perform these assessment actions and/or any containment and removal actions as may be necessary to achieve a permanent solution.

E. Project Team

Provide the names and the specific educational background, qualifications, and expertise of all professional members of the RFP Respondent's (and its Sub-Consultant's - if any) project team who will actually perform the work related to some or all of the project tasks. Identify the Licensed Site Professional with ultimate responsibility for the work.

F. Relevant Experience and Prior Performance

Provide details of relevant experience and prior performance of all the members of the RFP Respondent team, including the Licensed Site Professional, the project manager (if different), and the RFP Respondent's and its Sub-consultant's (if any) team members. This must include:

- a. A statement outlining the relevant experience of members of the RFP Respondent team in working successfully on matters and projects of similar complexity, addressing all required areas of expertise and experience necessary to address the services to be provided in response to this RFP.
- b. Sample materials (copies of text and plans not to exceed 10 pages in total) produced by the RFP Respondent for a previous client representing final documents on a project with similar complexity, range of tasks, and issues as outlined in this RFP. The sample material should be from a project for which the RFP Respondent team member(s) proposed for this project had principal responsibility.
- c. A description of the substantive nature of comparable contracts recently completed by members of the RFP Respondent team, including the party contracted with.

G. Grant Subsidies

Identification of any subsidies, grant awards, reimbursements or other funds available from federal, state, public or private sources for which the Town and/or the land owner is or may be eligible to perform these assessment actions and/or any containment and removal actions as may be necessary to achieve a permanent solution.

H. References

Provide a list of at least six similar environmental projects completed by the project team (the proposed Licensed Site Professional and the RFP Respondent's and its Sub-Consultant's principal team members) within the last 5 years. At least three of the projects listed should be those performed for federal, state or local public entities. For each project, submit a brief description of the RFP Respondent's team's responsibilities, the level of compensation under the contract, the result of the

RFP Respondent's work (e.g. adoption or rejection by the client; submission to DEP), and the name, title and telephone number of a reference person who can evaluate and judge the RFP Respondent's performance. Indicate the relationship between the reference persons listed and the relevant professional work of the RFP Respondent team members.

I. Competing Commitments

Each RFP Respondent shall discuss the means by which adequate and timely attention to this project will be assured, and identify other current or pending contracts of the RFP Respondent firm(s) in which project team members will be or may be involved, and which might compete for time and attention of the proposed RFP Respondent team members.

J. Certificates

Signed certificates of non-collusion and tax compliance in the form attached to this RFP

• Price Proposal

An original, and five (5) print copies, and one electronic copy (pdf) of the price proposal are required for submission. The price proposal must be submitted separately from the technical proposal and sealed in an envelope marked:

Price Proposal, Environmental Services – Stow/Martin Street Property
Respondent's Name: _____.

The price proposal must contain:

- A. The fee for the entirety of all services proposed in the technical proposal, including but not limited to travel, meetings, telephone, postage, and reproduction.
- B. A breakdown of all professional fees and expenses by each task and sub-task as shown in the Technical Proposal. A completed form is required that closely follows the format of "Attachment A."
- C. The hourly rates to be charged by the RFP Respondent for services performed by each team member.
- D. The unit prices to be charged by the RFP Respondent for all expenses performed by each team member.
- E. RFP Respondents must agree to honor price quotes until November 6, 2010 inclusive.

NOTE: The Town will only pay the successful Respondent for services actually rendered and activities actually performed, not for each activity listed on the Price Proposal Form. The Price Proposal is a NOT TO EXCEED Price for each line item, not a fixed price for the entire contract. The successful RFP Respondent shall only perform and invoice for those services and activities listed in the contracted scope of services that are specifically and separately authorized by the Town Manager and performed by the successful RFP Respondent.

PROPOSAL SUBMISSION DEADLINE

Proposals are due no later than 4:00 PM, on August 20, 2010 at the office of Steven Ledoux, Town Manager, Acton Town Hall, 472 Main Street, Acton, MA 01720. Proposals sent by facsimile or E-mail will not be accepted.

EVALUATION AND SELECTION CRITERIA

1. Minimum Evaluation Criteria

- A. Proposals must include all documentation specified under 'Proposal Submission Requirements' and meet the proposal submission deadline above.

- B. The proposed scope of services and work schedule must, in terms of effort, services, products and time frames, be nearly equivalent (but not necessarily identical) to, or exceed, the Scope of Services outlined in this RFP.
- C. The proposed Licensed Site Professional must have five or more years of professional experience working on similar environmental projects.

2. Comparative Evaluation Criteria

All proposals, which meet the minimum evaluation criteria, will be further evaluated on the basis of the following comparative criteria:

A. Availability of Staff Resources

Availability of the project team to fully attend to the project as needed, to be available for meetings as needed, and to be responsive to the reasonable requests and direction of the Town's staff and State officials will be deemed "advantageous".

Substantial direct and hands-on involvement of the RFP Respondent firm's principal (not including the Sub-Consultant's principal) in this project will be considered "highly advantageous".

Less than full commitment to, or longer timeframe than specified herein to complete the project because of lack of staff resources, competing contracts, or other reasons will be deemed "not advantageous".

B. Experience of Project Team

Successful experience of the project team (the proposed Licensed Site Professional and the RFP Respondent's and its Sub-Consultant's principal team members) with similarly complex environmental projects will be considered "advantageous" if there is evidence of formal approval or acceptance of the RFP Respondent team's work by the client in at least half of such projects completed by the project team within the last 5 years.

Successful experience of the project team (the proposed Licensed Site Professional and the RFP Respondent's and its Sub-Consultant's principal team members) with similarly complex environmental projects will be considered "highly advantageous" if there is evidence that the RFP Respondent team's work was formally approved or accepted by the client and/or the government agency with regulatory oversight and jurisdiction, and subsequently implemented in at least half of such projects completed by the project team within the last 5 years.

No experience with such projects, or no successful experience as defined above, will be considered "not advantageous".

C. Experience with Public Projects

Experience of the project team (the proposed Licensed Site Professional and the RFP Respondent's and its Sub-Consultant's principal team members) will be considered "advantageous", if projects completed by the project team within the last 5 years have included at least three environmental projects for federal, state or local public entities.

Experience of the project team that substantially exceeds the performance with public projects as required for a rating of "advantageous" will be considered "highly advantageous".

Experience of the project team that fails in the performance of public projects as required for a rating of "advantageous", or no experience with public projects will be considered "not advantageous".

D. Project Schedule

The project schedule will be considered "advantageous" if all activities proposed to be performed by the RFP Respondent's team including achieving a Response Action Outcome will be completed within 8 months from the awarded contract date.

The schedule will be considered "highly advantageous" if:

- i. Activities 1. through 4. listed under "PURPOSE OF ENVIRONMENTAL SERVICES" will be completed by September 24, 2010; and
- ii. All other activities proposed to be performed by the RFP Respondent's team, including achieving a Response Action Outcome, will be completed within 4 months from the awarded contract date.

Any schedule longer than the above will be considered "not advantageous."

E. Grant Subsidies

The response will be considered "advantageous" if it identifies any subsidies, grant awards, reimbursements or other funds available from federal, state, public or private sources for which the Town and/or the land owner may be eligible to perform these assessment actions and/or any containment and removal actions as may be necessary to achieve a permanent solution.

The response will be considered "highly advantageous" if it provides a detailed evaluation of various subsidies, grant awards, reimbursements or other funds available from federal, state, public or private sources for which the Town and/or the land owner is or may be eligible to perform these assessment actions and/or any containment and removal actions as may be necessary to achieve a permanent solution and provides a recommended strategy for achieving success in obtaining such subsidies, grant awards, reimbursements or other funds.

The response will be considered "not advantageous" if it does not identify any such subsidies, grant awards, reimbursements or other funds available from federal, state, public or private sources for which the Town is or may be eligible to perform these assessment actions and/or any containment and removal actions as may be necessary to achieve a permanent solution.

F. Review of Randomly Selected Projects

In the event that the comparative evaluation is inconclusive after the use of paragraphs A. through E. above, at least two projects will be randomly chosen from the list of projects completed by the project team (the proposed Licensed Site Professional and the RFP Respondent's and its Sub-Consultant's principal team members) within the last 5 years (the complete list is a proposal submission requirement), and checked for references. Relative to the chosen projects, the Town reserves the right to contact persons in addition to those shown as reference persons in the RFP Respondent proposal.

Overall satisfaction with the RFP Respondent and with the detailed services and products delivered by the RFP Respondent expressed by all references checked will be considered "highly advantageous".

Overall satisfaction with the RFP Respondent and with the detailed services and products delivered by the RFP Respondent expressed by at least 2/3 of the references checked will be considered "advantageous".

Overall satisfaction with the RFP Respondent and with the detailed services and products delivered by the RFP Respondent expressed by less than 2/3 of the references checked will be considered "not advantageous".

3. Selection Process

Technical proposals will be reviewed and evaluated without knowledge of the price proposals by a committee appointed by the Town Manager. Proposals will be evaluated based on the evaluation and selection criteria set forth herein. The committee will assign a composite rating to each proposal. There will

be no interviews, except that the Town reserves the right for the committee to interview two or more RFP Respondents who are equally most qualified, following the review of their proposals based on the evaluation and selection criteria set forth herein. In that event, interviews will be scheduled as soon as possible.

The RFP Respondent who, in the opinion of the committee, presents his/her project approach in the most logical, clear and understandable manner during the interview will be rated "highly advantageous". All other RFP Respondents that are interviewed will be rated "advantageous" or "not advantageous" in the committee's judgment. The committee will assign a composite rating to each RFP Respondent interview.

The committee will report its overall evaluation results to the Town Manager or his designee along with recommended changes in the proposal's plan of services (e.g. proposed date of completion of tasks and sub-tasks), should the contract be awarded. The Town Manager in consultation with the Acton Board of Selectmen will select the RFP Respondent and award the contract based on the "most advantageous" proposal after taking into consideration the evaluation of the technical proposals made by the committee together with a consideration of price.

GENERAL PROVISIONS

1. Correspondence Prior or During Proposal Submission Period

- A. Any information released by the Town either verbally or in writing prior to the issuance of this RFP shall be deemed preliminary and bind neither the Town nor the RFP Respondent.
- B. The Town will not accept oral supplements, revisions, or changes to the responses to this RFP. Written supplements, revisions, or changes will be accepted before the proposal deadline only.
- C. The Acton Planning Director will be the Town's project coordinator. All inquiries and communication concerning this RFP must be made in writing to Roland Bartl, Town Planner, 472 Main Street, Acton MA 01720, rbartl@acton-ma.gov. The Town may determine to respond to such inquiries in the form of an Addendum to this RFP. While the Town will endeavor to mail the Addendum to all parties which received a copy of the RFP, it is the responsibility of each RFP Respondent to ensure that it has received any and all Addenda to the RFP and to acknowledge receipt thereof in its response.
- D. RFP Respondents must respond in writing to all follow-up questions by the Town concerning their proposal.

2. Contract Award

The Town reserves the right to reject any or all proposals, waive any informality in the proposals, and to accept the proposal or proposals deemed to be in the best interests of the Town. The Town may award a contract, if at all, to the responsive and responsible Proposer whose proposal is deemed by the Town to be the most advantageous to the Town, taking into consideration price and the evaluation criteria included in this RFP. The Town of Acton may issue change orders to increase or decrease the scope of work, or as necessary to conform to available funding amounts and levels.

- A. Execution of the contract is contingent on the execution by the Town of Acton of an extended Purchase and Sale Agreement with the owner of the Stow/Martin Street property of sufficient duration to accommodate the environmental services called by this contract.
- B. Execution of the contract is contingent upon execution by the Town of Acton and the owner of the Stow/Martin Street property of a Right of Entry Agreement sufficient to accommodate the on-site environmental services.
- C. It is the Town's goal to have a RFP Respondent selected and contract awarded by August 25, 2010, and to have the contract fully executed by August 30, 2010.
- D. The Town intends to award the contract in the form of an Agreement, a sample of which is attached hereto as **Exhibit 1**, to one and only one successful RFP Respondent. The successful RFP

Respondent shall be solely responsible for any separate contractual agreements with its Sub-Consultant(s), if any are proposed and agreed to in the contract between the Town and the RFP Respondent.

- E. Pending execution of a contract by the selected RFP Respondent, all RFP Respondents must agree to honor price quotes until November 6, 2010 inclusive.
- F. Award of the contract by the Town will be conditioned upon successful negotiation of revisions to the scope and plan of services as identified during the RFP Respondent proposal evaluation process.
- G. Award of the contract is in the sole discretion of the Acton Town Manager or his designee, in consultation with the Acton Board of Selectmen.
- H. The Town reserves the right at any time to accept any proposal in whole or in any part, and to reject any or all proposals.

PUBLIC NOTICE

TOWN OF ACTON, RFP. RFP for Environmental Services, Stow/Martin Street Property. For RFP call Acton Planning Department, (978) 929-6631. Proposals to Town Manager, 472 Main Street, Acton, MA 01720, no later than August 20, 2010 at 4:00 PM. Proposals may be rejected in whole or in part. Contracts approved by CPO.

Lowell Sun, 08/06/10.

CERTIFICATE OF NON-COLLUSION

The undersigned hereby certifies under the penalties of perjury that this bid or proposal is in all respects bona fide, fair and has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certificate, the word person shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Signature of person signing the bid or proposal

Name of business

CERTIFICATE OF TAX COMPLIANCE

Pursuant to Ch.62C, S.49A (b) of the Massachusetts General Laws, I,

_____, authorized signatory for
(name)

_____, do hereby certify under the pains and penalties
(name of RFP Respondent)

of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes and has filed all state tax returns and paid all State taxes required under law.

RFP Respondent

Date

Signature of Authorized
Representative of RFP Respondent

Social Security Number or
Federal ID Number of RFP Respondent

Title

ATTACHMENT A – PRICE PROPOSAL FORM

Breakdown of Professional Service Fees by Task and Sub-task

Name of Proposer: _____

INSTRUCTIONS:

1. PROVIDE INFORMATION FOR ALL OF THE TASKS AND SUB-TASKS INCLUDED IN THE RESPONDENT’S PROPOSED SCOPE OF SERVICES SUBMITTED IN RESPONSE TO THE RFP, INCLUDING BUT NOT LIMITED TO THE LIST BELOW – ADD ADDITIONAL SHEETS TO THE EXTENT NECESSARY.

2. NOTE: THE TOWN WILL ONLY PAY THE SUCCESSFUL RESPONDENT FOR SERVICES ACTUALLY RENDERED AND ACTIVITIES ACTUALLY PERFORMED, NOT FOR EACH ACTIVITY LISTED ON THIS PRICE PROPOSAL FORM. THE PRICE PROPOSAL IS A NOT TO EXCEED PRICE FOR EACH LINE ITEM, NOT A FIXED PRICE FOR THE ENTIRE CONTRACT. THE SUCCESSFUL RFP RESPONDENT SHALL ONLY PERFORM AND INVOICE FOR THOSE SERVICES AND ACTIVITIES LISTED IN THE CONTRACTED SCOPE OF SERVICES THAT ARE SPECIFICALLY AND SEPARATELY AUTHORIZED BY THE TOWN MANAGER AND PERFORMED BY THE SUCCESSFUL RFP RESPONDENT.

Task Description	Fees	Expenses	Total
Preparation of a Release Notification Form (if necessary)			
Sub-Total			
Sampling to determine the nature and extent of the soil and sediment contamination			
• Digsafe			
• HASP			
• Well Installation (Specify Number and Location) (if any)			
• Soil Borings (Specify Number and Location)			
• Soil Samples (Specify Number, Location, Depths)			
• Sediment Samples (Specify Number, Location, Depths)			
• Groundwater Samples (Specify Number, Location, Depths) (If any)			
• Analytical Fees (Specify All Parameters Analyzed)			
• MCP Phase II Report Preparation			
• Other			
Sub-Total			
Evaluation to determine if the site falls under the MCP's coal and wood ash exemption			
• Sampling and Analytical Fees			
• Report Preparation			
• Other			
Sub-Total			

Task Description	Fees	Expenses	Total
Risk characterization to determine the level of risk and the need (if any) for site remediation			
• Sampling and Analytical Fees			
• Report Preparation			
• Other			
Sub-Total			
Evaluation of remedial alternatives (such as soil removal or capping) if necessary to achieve a level of no significant risk			
• Recommendations for site remediation to achieve a level of no significant risk in the most cost-effective manner			
• RAM Plan			
• MCP Phase III Report Preparation			
• Preparation of a bid specification for the performance of the selected remedial alternative (if any) to be included in a future invitation for bids for the performance of such work if required			
• Other			
Sub-Total			
Site Closure Documentation			
• Response Action Outcome Statement			
• Activity and Use Limitation (if appropriate)			
• Other			
Sub-Total			
Other assessment activities and reports as may be necessary under the MCP (List with Specificity)			
•			
•			
•			
•			
Sub-Total			
PROJECT TOTAL			

3. In the event services are required other than those listed in the above table, they will be provided at the Unit Prices on the attached list and will be performed if and only if authorized by the Acton Town Manager.

Authorized Signatory:

Name:
Position:

UNIT PRICES

Description	Rate
Personnel	
• Principal	
• LSP	
• Project Manager	
• Senior Professional	
• Geologist	
Equipment	
• Photoionization Detector	
• Combo Meter/DO/pH/T/Redox/Cond. w/data logger	
Drilling	
• Drilling Rig extra day rate	
• Overtime Rate per hour/per crew	
Laboratory Analysis	
Soil/Sediment (per sample)	
• Arsenic	
• Chromium	
• Lead	
• Polynuclear Aromatic Hydrocarbons	
Groundwater (per sample)	
• Arsenic	
• Chromium	
• Lead	
• Polynuclear Aromatic Hydrocarbons	
• pH	

EXHIBIT 1

**Agreement Between Owner and Consultant for 25%
Design and Engineering Services for Bruce Freeman
Rail Trail**

AGREEMENT made as of December ____, 2006

BETWEEN the Owner:

Town of Acton, Massachusetts
472 Main Street
Acton, Massachusetts 01720

and the Engineering, and Design Consultant (hereafter referred to as the "Consultant"):

Greenman – Pedersen, Inc.
105 Central Street, Suite 4100
Stoneham, MA 02180

For the following Project:

Concept Plan and Preliminary Design of the Bruce Freeman Rail Trail (BFRT) –
Acton Indoor Sports, Acton to Acton/Carlisle Town Line

The Owner and Consultant agree as set forth below.

ARTICLE 1

CONSULTANT'S RESPONSIBILITIES

1.1 CONSULTANT'S SERVICES

1.1.1 The Consultant's services to be provided under this Agreement (the "Services") consist of those services performed by the Consultant, the Consultant's employees and the Consultant's engineers and consultants ("Consultants") as enumerated in Articles 2 and 3 of this Agreement, and all other obligations and responsibilities of the Consultant pursuant to the provisions hereof.

1.1.2 The Consultant's Services shall at all times be performed expeditiously, consistent with professional skill and care and the orderly progress of the work required to complete the Project and in accordance with the Project schedule attached hereto as **Exhibit E** including any modifications or updates to such schedule provided by the Owner (the "Project Schedule"). The schedule for performance of the Consultant's Services as reflected in the Project Schedule shall not be amended or modified by the Consultant without obtaining the prior written consent of the Owner. During the performance of its Services, the Consultant and its Consultants shall at all times assist, cooperate and work closely with the Owner's representatives (including boards and committees),

contractors, consultants and others employed by the Owner in order to facilitate the Owner's review and input and to promote the best interests of the Owner and the Project.

1.1.3 The Consultant shall perform the Services under this Agreement in accordance with the highest professional standards of skill, care and diligence on projects of comparable scope and complexity. The Consultant shall be responsible for all Services performed by its Consultants. The Consultants shall perform Services under any subconsultant agreement with the Consultant in accordance with the professional standards set forth in this Subparagraph 1.1.3.

1.1.4 The Consultant shall staff the Project with qualified personnel, as proposed in its response to the Owner's Request for Qualifications or Request for Proposals and including the personnel listed on **Exhibit C** ("Key Personnel"), to provide effective and timely production, management, administration and superintendence with respect to the Services. It is expressly understood and agreed that, in retaining the Consultant to perform the Services, the Owner is relying upon the Consultant's agreement that the Key Personnel will be available for, and actively participate in, provision of the Services under this Agreement as appropriate for each stage or phase of the Project. The failure of any such Key Personnel to be available for and actively participate in provision of the Services as aforesaid shall constitute a breach of this

work and compensation of each Consultant retained by the Consultant to perform Additional Services, shall be subject to the prior written approval of the Owner, the Owner hereby approving retention of the Consultant's Consultants specifically identified on **Exhibit B**. The Consultant shall, as part of its Basic Services, provide the services of the Consultants listed on **Exhibit B** as being retained by the Consultant, whether or not the Consultant is identified by name (except for any Consultants listed on **Exhibit B** that are expressly indicated as being retained by the Consultant as an Additional Service) and such other Consultants as may be required to meet the Consultant's obligations to perform Basic Services under this Agreement, provided that each such additional Consultant shall be subject to prior approval by the Owner.

2.1.3 During all Phases of the Consultant's Services, the Consultant shall coordinate and schedule the efforts required of its Consultants and consultants engaged by the Owner ("**Owner's Consultants**"), and assist the Owner with, and attend as requested by the Owner, customary reviews by any municipal authorities.

2.1.4 The Owner acknowledges that the Consultant is not responsible for the quality and accuracy of the work performed by the Owner's Consultants, who are not part of the Consultant's design team. However, if the Consultant discovers or believes at any time that designs or other information or work product furnished by any of the Owner's Consultants is defective or deficient or is not compatible, coordinated and consistent with the design of other portions of the Project, the Consultant shall so inform the Owner in writing providing full details.

2.1.5 Notwithstanding any other provisions of this Agreement, only the Existing Conditions Assessment, the Concept Plan and Preliminary Design Services and the General Activities related thereto are authorized as of the date of this Agreement. All subsequent services are not part of the Basic Services as of the date of this Agreement. The Consultant is not authorized to perform services additional Design Development services unless and until specifically authorized in writing by the Owner. The Owner has not appropriated funds for additional Design Development, Construction Documents, Bidding and Negotiation or Construction Phases of the Project (collectively, the "**Subsequent Phases**"). Accordingly, the Owner has no obligation to compensate the Consultant for the performance of any services involving the Subsequent Phases. The Owner may at its sole option, and subject to applicable law, request the Consultant to perform services in connection with some or all of the Subsequent Phases. The Owner may also elect to engage other designers to perform services in connection with Subsequent Phases of the Project, or may elect not to proceed with the Project. If the Owner does not elect to request the Consultant to perform services in connection with Subsequent

1.1.5 Consistent with the standard of care set forth in Subparagraph 1.1.3, all drawings, specifications and other documents prepared by the Consultant or its Consultants and all Services performed by the Consultant or its Consultants under this Agreement shall comply with all federal, state and local laws, ordinances, codes, rules, and regulations as they may be amended, and all other requirements, approvals and permits applicable to the Project (collectively, "**Laws and Requirements**").

ARTICLE 2

SCOPE OF CONSULTANT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Services to be performed under this Agreement include Basic Services, as hereafter described, and any Additional Services approved by the Owner as described in Article 3. The Consultant's Basic Services consist of those described in this Article 2, all services described in Article 12, and all services identified in **Exhibit A** or other provisions of this Agreement. **Exhibit A** contains further definition of the Consultant's Scope of Services under this Agreement.

2.1.2 The Consultant and its employees shall perform at least fifty percent (50%) of all work under the Agreement, measured either by value of services rendered, or by time spent on such services. The identity and scope of work of each Consultant retained by the Consultant to perform work in connection with Basic Services, and the identity, scope of

Phases, this Agreement shall terminate upon the completion of the Schematic Design Phase

2.1.6 The Owner may issue change orders to decrease the scope of work included in the Basic Services, or as necessary to conform to available funding amounts and levels. A credit to the Owner for such decreases in the scope of work shall be calculated in the same manner as compensation to the Consultant for Additional Services provided in Article 11.

2.2 EXISTING CONDITIONS ASSESSMENT, CONCEPT PLAN AND PRELIMINARY DESIGN

2.2.1 The Consultant shall perform site planning and analysis and design services for the Project as provided in Exhibit A.

2.2.2 As Project requirements are sufficiently identified, the Consultant shall periodically update the schedule in Exhibit E to identify milestone dates for decisions required of the Owner and design services furnished by the Consultant. Such updates shall not change task completion dates, unless the Owner grants written approval for such changes.

2.2.3 The Consultant shall review with the Owner a reasonable number of alternative approaches to design and construction of the Project.

2.2.4 Based on the approved program, and the Project Schedule the Consultant shall prepare, for approval by the Owner, Preliminary Design Documents, developed to the twenty-five percent (25%) level of complete design development, consisting of drawings prepared on a CADD system and other documents illustrating the concept preliminary design. The Consultant shall prepare such studies or other materials as are necessary to establish the design concept of the Project.

2.2.5 The Owner has provided to the Consultant certain information concerning existing conditions at the site, including the documents and information listed on Exhibit G. The Consultant shall review all such information provided by the Owner, verify, in general, the accuracy of such information and notify the Owner of any inconsistencies or discrepancies observed by the Consultant. If the Consultant believes at any time that it is necessary or appropriate in connection with the Preliminary Design to undertake additional surveys or other investigations of conditions at the site, including but not limited to investigations necessary to obtain or confirm the location of concealed utilities or other elements, or additional geotechnical or subsurface investigations, the Consultant shall so notify the Owner, specifically identifying the additional investigations or information deemed necessary by the Consultant. The Owner shall provide such additional investigations or information as

are reasonably requested by the Consultant, at the Owner's expense or, at the Owner's option, the Consultant shall engage appropriate consultants to provide such additional investigations or information, and the Owner shall reimburse the Consultant for the costs of such investigations or information as an Additional Service.

2.2.6 At the completion and approval of the Existing Conditions Assessment and Concept Plain, the Consultant shall prepare an estimate of Conceptual Construction Cost (as defined in Subparagraph 5.1.1). In addition, if the Owner elects to obtain an estimate of Conceptual Construction Cost from another party, the Consultant shall carefully review each cost estimate prepared by such other party(s) and provide comments on such cost estimate(s) and otherwise participate in the reconciliation of such cost estimate(s).

2.3 OTHER BASIC SERVICES

2.3.1 The Consultant shall, at the request of the Owner, prepare required documents and plans for, and appear on the Owner's behalf at, administrative or regulatory hearings, presentations or conferences in connection with any matter related to obtaining required Permits and Approvals. The Consultant shall also, at the Owner's request, attend sessions or prepare required documents and plans for and make presentations regarding the Project to Owner's funding sources and such other persons (including the Owner and its committees, boards and staff) as the Owner may require.

2.3.2 The Consultant shall maintain Project records in an orderly manner according to filing systems approved by the Owner, including complete and accurate records of the Project correspondence, Project meeting minutes, product data and samples, supplementary Drawings, and such other schedules, reports and other documents as are prepared or received by the Consultant and its Consultants in connection with the Project. The Owner and its representatives shall have the right to examine such Project records at any time, and to obtain copies thereof.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in Section 3.2, referred to herein as "Additional Services", are not included in Basic Services and they shall be paid for by the Owner, if and as provided in this Agreement, in addition to the compensation for Basic Services, as provided in Article 11. Prior to performing any service which the Consultant claims to be an Additional Service, the Consultant shall give written notice to the Owner that such service is an Additional Service, which notice shall include a proposed lump sum or an estimate of the additional compensation payable to the Consultant on account

thereof including, without limitation, compensation for preparation of any necessary changes to the Drawings, design work, management services, and all other costs, fees and other compensation claimed on account of such services, and an estimate of the amount of time required to perform such services and any modifications of the schedule for the Services or the Project Schedule necessitated thereby. Such service shall not be performed without the Owner's prior written approval. If the Owner's approval is given and a lump sum payment on account of such Additional Services has not been agreed upon, the compensation payable to the Consultant on account of such Additional Services shall not exceed the estimated compensation therefor proposed by the Consultant, nor shall the time for performance of such Additional Services exceed the estimated time proposed by the Consultant, without prior written approval from the Owner. Failure of the Consultant to obtain the Owner's prior written approval for performance of the Additional Services, or for any change in the estimated compensation or time required therefor as specified above, shall constitute a waiver by the Consultant of any claim for any additional compensation or reimbursement with respect to such services.

3.1.2 Services shall be compensated as Additional Services only to the extent that the need for such services is not attributable to causes within the Consultant's reasonable control and do not arise from the negligent errors or omissions, breach of contract, or other negligent or wrongful acts of the Consultant or its Consultants.

3.2 ADDITIONAL SERVICES

3.2.1 Change orders issued by the Owner to increase the scope of work.

3.2.2 Making revisions in Drawings or other documents (other than minor revisions) when such revisions are inconsistent with approvals or instructions previously given by the Owner.

3.2.3 Making revisions in Drawings or other documents (other than minor revisions) when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents (except where such enactment or revision of codes, laws or regulations was publicized and generally known within the applicable design disciplines in advance).

3.2.4 Providing services required because of significant changes in the Project. If the Consultant believes that any proposed change is a significant change in the Project within the meaning of this subparagraph, the Consultant shall so notify the Owner in advance of performing any services related to such change.

3.2.5 Providing financial feasibility or other special studies.

3.2.6 Providing services relative to future facilities not contemplated by the Owner and the Consultant on the date hereof as included in the Project.

3.2.7 Other than as required as a part of Basic Services under this Agreement, providing services after the Consultant's responsibility to provide Basic Services has terminated.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide sufficient information regarding requirements for the Project, and consult with the Consultant in the Consultant's development of a program which shall set forth the Owner's objectives, schedule, constraints and criteria.

4.2 Only the Owner's Representative, as designated by the Town Manager of Acton from time to time, and such other individuals as may be expressly designated in writing from time to time by the Town Manager of Acton, are authorized to act on the Owner's behalf with respect to the Project, including, without limitation, delivering the Owner's authorizations, approvals, requests, revisions or changes described in Subparagraphs 3.1.1, 3.2.1 and 3.2.3. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's Services. Until such time as the Town Manager of Acton notifies the Consultant to the contrary, the Owner's Representative shall be Roland Bartl, AICP, Town Planner.

4.3 The Owner shall furnish the services of the Owner's Consultants, if any, specified on **Exhibit B** in a timely manner when and as such services are reasonably required for the implementation of the Project.

4.4 All certificates or certifications to be executed by the Consultant or the Consultant's Consultants at the Owner's request shall be submitted to the Consultant for review and approval at least ten (10) days prior to the date the Consultant is required to execute and return such certificates to the Owner. The Owner shall not request certifications from the Consultant that would require knowledge or services beyond the scope of this Agreement. Certifications by the Consultant and its Consultants shall be in accordance with the standard of professional skill and care set forth in Subparagraph 1.1.3.

4.5 The services and information required by paragraph 4.5 shall be furnished at the Owner's expense, and provided

the Consultant complies with its obligations under Subparagraphs 2.1.4 and 2.2.5 the Consultant shall be entitled to rely thereon.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 “Conceptual Construction Cost” shall mean the then estimated total cost to the Owner of all elements of the Project designed or specified by the Consultant and its Consultants.

5.1.2 The Conceptual Construction Cost shall include the cost at then-current market rates of labor and materials, plus a reasonable allowance for a contractor’s overhead and profit.

5.1.3 The Conceptual Construction Cost shall include the compensation of a Consultant to perform the completion of the design beyond the 25% stage.

5.2 RESPONSIBILITY FOR DEVELOPMENT OF ESTIMATED CONSTRUCTION COST

5.2.1 The Consultant’s estimates of Conceptual Construction Cost represent the Consultant’s judgment as a design professional familiar with the construction industry.

5.2.2 It is recognized, however, that neither the Consultant nor the Owner has control over the cost of labor, materials or equipment, or over contractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Conceptual Construction Cost.

ARTICLE 6

USE OF CONSULTANT’S DRAWINGS, SPECIFICATIONS AND DOCUMENTS

6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Consultant and its Consultants pursuant to this Agreement (collectively, “Instruments of Service”) are instruments of the Consultant’s service and the Consultant shall be deemed the author of such Instruments of Service and shall retain all common law, statutory and other reserved rights, including the copyright. The Consultant shall not, however, except as provided in this Article 6, use the Instruments of Service for any purpose not relating to the Project without the Owner’s prior written consent. The Owner shall have a perpetual, royalty-free right and license (the “License”) to retain copies, including reproducible copies (and electronic copies on computer disks

or other computer memory storage devices) of the Instruments of Service. The License shall include the right to copy, create derivative works based on, distribute and use the Instruments of Service for any purpose, including for the construction, reconstruction, renovation, extension, expansion, repair, maintenance, use and occupancy of the Project, subject to the provisions of this Article 6. The Consultant shall be responsible for obtaining from the Consultant’s Consultants all license agreements necessary in order for the Consultant to grant the License to the Owner. The License shall be effective immediately upon creation of any Instruments of Service. The Consultant recognizes that the Instruments of Service must not infringe upon the copyright of any third party, and agrees to indemnify and hold the Owner harmless from any loss, damage or expense, including reasonable attorneys’ fees, arising from any claimed infringement by the Instruments of Service of any copyright of any third party. The word “Drawings” as used in this Paragraph 6.1 includes the Consultant’s CADD Drawings and any other graphic images of the Drawings contained in computer files stored on computer disks, tapes or other computer memory storage media. The License shall include the right of the Owner to grant limited rights or licenses to use and reproduce applicable portions of the Instruments of Service to the Owner’s contractors, representatives and agents for purposes of execution of the Project. During the term of this Agreement and continuing after completion of the Consultant’s Services under this Agreement or other termination of this Agreement, the License shall be irrevocable.

6.2 The Consultant shall have the right to retain copies, including reproducible copies and electronic copies, of the Instruments of Service for information and reference in connection with other projects, and shall have the right to create derivative works based on the Instruments of Service, provided that the Consultant does not (a) provide to any third party a copy of any Instruments of Service in unmodified form or (b) reuse or substantially replicate or copy design elements or features of the Project on other projects in a manner so that such other projects appear to be similar to or derivative from the Project, without the Owner’s prior written consent.

6.2.1 The Consultant shall have the right, subject to prior written consent of the Owner, not to be unreasonably withheld, to include photographic or artistic representations of the design of the Project among the Consultant’s promotional and professional materials.

6.3 Use or reuse of the Instruments of Service by the Owner other than in connection with the Project without written authorization by the Consultant will be at the Owner’s risk. The Consultant shall not be responsible for changes made in the Instruments of Service by anyone other than the Consultant and its Consultants, or for the Owner’s use of the Instruments of Service without the participation of the Consultant as provided in this Agreement; and the Owner, to

the extent permitted by law, shall indemnify and hold harmless the Consultant from any claim, liability or cost arising out of any such use or reuse of, or changes to, the Instruments of Service as described in this Paragraph 6.4.

ARTICLE 7

DISPUTE RESOLUTION

7.1 Unless otherwise agreed, the Consultant shall carry on the Services to be performed under this Agreement in accordance with the terms hereof notwithstanding any claim, dispute or other matter in question arising out of or relating to this Agreement or breach thereof. All such claims or disputes or other matters shall be submitted to a court of competent jurisdiction in Middlesex County, Massachusetts, subject to any applicable statute of limitations, unless the parties mutually agree to use mediation, arbitration or other alternative dispute resolution methods. During the pendency of any dispute resolution process, the Owner shall continue to make payments to the Consultant for all amounts due hereunder, except as provided in Paragraph 10.2.3.

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice should the Consultant fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner and such failure is not cured within seven (7) days after receipt of such notice. Any termination of this Agreement hereunder shall not affect or impair the right of the Town to recover damages occasioned by any default of the Consultant or to set off such damages against amounts otherwise owed to the Consultant.

8.2 If the Project is suspended by the Owner for more than one hundred and twenty (120) consecutive days, the Consultant shall be compensated for Services performed prior to notice of such suspension. If the Project is thereafter resumed, the Consultant shall not be entitled to additional compensation as a result of such interruption and resumption of the Consultant's Services; provided that if the Project is suspended or the Consultant's Services are suspended for more than one hundred eighty (180) consecutive days, the Consultant may terminate the Agreement by giving not less than seven (7) days written notice.

8.3 This Agreement may be terminated by the Owner for its convenience and without cause upon not less than ten (10) days' written notice to the Consultant. In the event the Owner so terminates this Agreement without cause, the Consultant shall be compensated for any unpaid and undisputed amount owed for Services performed prior to termination, together

with Reimbursable Expenses, as described in Paragraph 10.1 hereof, incurred prior to termination.

8.4 For purposes of this section, it is acknowledged that the Consultant's services under the contract are personal services and may not be assumed by or assigned by a trustee in bankruptcy.

8.5 In the event of termination, the Consultant shall promptly deliver to the Town copies of all Instruments of Service developed under this Agreement to the time of termination.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the laws of Massachusetts.

9.2 To the maximum extent permitted by law, the Consultant, at its expense, shall indemnify, hold harmless and defend with counsel acceptable to the Owner, the Owner and any of its or their boards, committees, subcommittees, commissions and other affiliated or related entities and/or its officials, members, directors, officers and employees from and against all claims, causes of action, suits, demands, losses, damages, liabilities and expenses (including reasonable attorneys' fees) to the extent the same arise out of or result from the misconduct, breach or negligence (including without limitation negligent professional acts, errors or omissions) of the Consultant or its Consultants in performance of Services under this Agreement. The Consultant shall cause this indemnity obligation to be insured under its commercial general liability and professional liability insurance policies, as applicable, to the extent that such obligation is covered by generally available policy terms or endorsements and subject to the terms, conditions and exclusions of the Consultant's insurance policies. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the benefit of the Owner or such other indemnitees that would otherwise exist. This indemnification and hold harmless agreement shall not be limited by any provision of insurance required pursuant to Paragraph 12.1 of this Agreement. The Consultant shall specifically include in its agreements with its Consultants an indemnification provision identical in substance to the provisions of this Paragraph 9.2, by which each Consultant agrees to indemnify the Consultant and the Owner.

9.3 The Owner and the Consultant waive all rights against each other and against the contractors, consultants, agents and employees of the other for property damage, but only to the extent such property damage is covered by property insurance maintained by the Owner or the

Consultant, as applicable, and only to the extent that such waiver shall not result in a denial or reduction in coverage under such property insurance policies. The Owner and the Consultant shall each require similar waivers from their contractors, consultants and agents.

9.4 This Agreement shall be binding upon and inure to the benefit of the Owner and Consultant and their respective successors, assigns and legal representatives. Neither the Consultant nor the Owner shall directly or indirectly assign this Agreement without the written consent of the other.

9.5 This Agreement represents the entire and integrated agreement between the Owner and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Consultant.

9.6 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Owner or the Consultant.

9.7 The Consultant and the Consultant's Consultants shall have no right to take, collect, test or analyze soil or water samples from the Project site and shall have no responsibility for the handling, removal or disposal of hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If any such hazardous materials are encountered at the Project site, and a Licensed Site Professional (LSP), retained by the Owner at its sole expense, reasonably determines that the Consultant's continued performance of any of its Services hereunder could expose the Consultant to loss, damage or liability as a result of the presence of such hazardous materials, the Consultant may, upon reasonable prior notice to the Owner, suspend performance of those of its Services affected thereby until adequate arrangements are made by the Owner to remediate the hazardous materials.

9.8 Any and all notices, demands, consents, approvals, requests, offers, elections and other communications required or permitted under this Agreement ("notice") shall be given in writing and the same shall be delivered either in hand, by telecopier with hard copy confirmation of transmission, or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all delivery charges prepaid (if by Federal Express or similar carrier). If, pursuant to the provisions of this Agreement, a notice is required to be given or delivered on or before a specific date which is not a business day, the deadline for giving such notice shall automatically be extended to the next following business day.

All notices required or permitted to be sent hereunder shall be deemed to have been given for all purposes of this Agreement upon the date of confirmed transmission, in the case of a notice by telecopier, and, in all other cases, upon the date of receipt or refusal of delivery, except that if a notice is so given on a day which is not a business day, such notice shall be deemed to have been given on the next following business day.

All such notices shall be addressed, if to the Owner to:

Town Manager
Town of Acton
472 Main Street
Acton, Massachusetts 01720

and if to the Consultant, to:

Christer Ericsson, P.E.
Greenman - Pedersen, Inc.
105 Central Street, Suite 4100
Stoneham, Massachusetts 02180

By notice given as herein provided, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice and each shall have the right to specify as its address any other address within the United States of America.

9.9 No action or inaction by the Owner or the Consultant pursuant to this Agreement or with respect to the Project shall operate as a waiver of any rights under this Agreement, except as expressly provided herein.

9.10 No official, member, director, officer, consultant, trustee, joint venturer, partner, beneficiary, employee, volunteer, agent or representative of the Owner or any affiliate or related entity of the Owner shall be individually or personally liable to the Consultant under any term or provision of this Agreement for the Owner's payment obligations or otherwise, or because of any breach hereof, or otherwise liable in connection with any claim or matter arising out of this Agreement or the Project, the Consultant agreeing to look solely to the assets of the Owner for the satisfaction of any liability of the Owner hereunder. In no event shall the Owner be liable to the Consultant except for payment for services rendered pursuant to and in accordance with this Agreement, nor shall the Owner or any affiliate or related entity of the Owner ever be liable to the Consultant for indirect, special, incidental or consequential damages, or for damages or loss from causes beyond the Owner's reasonable control.

9.11 Duties, responsibilities and limitations of authority of the Consultant under any provision of this Agreement shall not be restricted, modified or extended except by the written agreement of the Owner and the Consultant.

9.12 The Owner's review, approval, acceptance or payment for Services under this Agreement shall not operate as a waiver of any rights under this Agreement. The rights and remedies of the Owner provided for under this Agreement are in addition to and not in limitation of any other rights or remedies provided by law or in equity. The Owner may assert a right to recover damages either during or after performance of this Agreement.

9.13 If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be deemed affected thereby.

9.14 Under this Agreement, the Consultant is obligated to ensure that the Project be conducted, and that all services and other work performed by the Consultant under the Agreement shall be performed so as to comply with all applicable federal, State and municipal laws, regulations, codes, and ordinances. In particular, without limitation, the Consultant agrees to comply with all regulations pertaining to approvals for state grants.

9.15 The provisions of Article 6, Article 7, Paragraph 9.2, Paragraph 9.8, Paragraph 9.9, Paragraph 9.10, Paragraph 12.1, and any other provisions of this Agreement that by their terms or by implication are intended to continue in effect after the expiration (full performance) or earlier termination of this Agreement, shall survive the expiration (full performance) or termination for any reason of this Agreement.

ARTICLE 10

PAYMENTS TO THE CONSULTANT

10.1 REIMBURSABLE EXPENSES

10.1.1 Reimbursable Expenses, which are in addition to compensation for Basic and Additional Services, shall mean those expenses reasonably incurred by the Consultant and the Consultant's employees and Consultants in the interest of the Project and described in Subparagraphs 10.1.1.1 through 10.1.1.3 below; provided, however, that in no event shall the Owner have any obligation to reimburse the Consultant for any expenses incurred (i) in connection with the preparation of the Consultant's application or proposal to the Owner or promotional or marketing material; or (ii) more than ninety (90) days prior to presentation to the Owner of the Consultant's application for payment of such expenses.

10.1.1.1 Fees paid in connection with Permits and Approvals for the Project.

10.1.1.2 Expense of renderings, models, photography and mock-ups requested by the Owner (design work in connection with mock-ups or models is part of the Consultant's Basic

Services; only the costs of producing models or mock-ups are Reimbursable Expenses).

10.1.1.3 Premium expense for additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that specified in Article 12.

10.1.2 The following expenses shall not be considered Reimbursable Expenses, and are included in the Consultant's compensation for Basic Services: (i) costs for computer use, data and word processing, facsimile transmission, routine duplication, etc., (ii) travel and related expenses, unless expressly approved in advance by the Owner in special circumstances, (iii) expenses for telecommunications services (including telephone and telecopier, long distance and local service charges, cellular telephone charges, pagers and other wireless telecommunications devices, etc.), (iv) costs of consumable office supplies, (v) interest and penalties, (vi) attorneys fees, and (vii) any other costs or expenses not specifically listed in subparagraph 10.1.1 or specifically approved in advance by the Owner.

10.2 PAYMENTS ON ACCOUNT OF SERVICES

10.2.1 Payments on account of Basic Services, Additional Services and Reimbursable Expenses shall be made monthly and in accordance with Article 11.

10.2.2 The Consultant shall submit to the Owner a monthly request for payment, in form and substance satisfactory to the Owner. Each request for payment shall set forth the amount due on account of Basic Services, Additional Services and Reimbursable Expenses for the preceding month and shall contain a detailed breakdown of each amount, the sum of all prior payments, and such other information required under this Article 10. The Consultant's request for payment shall clearly separate billing for work completed with respect to the Project in Acton from work that may be completed under separate contract with the Towns of Carlisle and/or Westford, and shall include a description of services performed under the task or tasks in such form and detail and with such supporting data as the Town of Acton may reasonably require showing the computational basis for all charges. The Consultant shall keep records pertaining to services performed employing sound bookkeeping practices and in accordance with generally accepted accounting principles.

10.2.3 The Owner shall review each such request for payment, and may make such exceptions or adjustments as the Owner considers necessary or appropriate. Within thirty (30) days after submission of each such request for payment to the Owner or as expeditiously as possible, if longer than thirty (30) days, the Owner shall make payment to the Consultant in the amount approved, subject to Subparagraph 10.2.4 below. The cumulative amounts of such progress payments to the

Consultant shall not exceed the amount specified in Subparagraph 11.1.1.

10.2.4 Not more than seventy-five percent (75%) of the Basic Compensation, as specified in Article 11, shall be paid or payable prior to the approval of the 25% design by the Massachusetts Highway Department ("Mass Highway").

10.2.5 Payments under this Agreement will be made only to the Consultant. The Consultant shall be responsible for payment of any of its Consultants. The Consultant shall deliver with each request for payment a release in a form acceptable to the Owner from each Consultant affirming that the Consultant has been or will be paid by the Consultant for services rendered and covered by the request for payment.

10.2.6 The Consultant shall not be paid for any services not included in the contract scope of work, such as additional work that should have been anticipated by the Consultant in the preparation of its proposal, as reasonably determined by the Town Manager, or any services made necessary by the fault or negligence of the Consultant or any of its Consultants.

10.2.7 Any provision of this Agreement to the contrary notwithstanding, the Owner shall not be obligated to make any payment (whether a progress payment or final payment) to the Consultant hereunder if any one or more of the following conditions exists:

1. The Consultant is in material default of any of its obligations hereunder;

2. Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, that payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement; or

3. The Consultant has failed, without good cause, to make payments promptly to its Consultants or others engaged in connection with performance of Services for which the Owner has made payment to the Consultant.

10.3 No progress payment made shall be construed as final acceptance or approval of that part of the Services to which such progress payment relates, or relieve the Consultant of any of its obligations hereunder.

10.4 When the Consultant receives payment from the Owner, the Consultant shall promptly make payment to each Consultant whose work was included in the Services for which payment was made by the Owner. The Consultant shall promptly pay all bills for labor and materials performed and furnished by others in connection with the performance of services.

10.5 The acceptance of final payment shall constitute a waiver by the Consultant of all claims except those previously made in writing and identified by the Consultant as unsettled at the time of its final request for payment.

10.6 CONSULTANT'S ACCOUNTING RECORDS

10.6.1 The Consultant shall keep detailed records of all Reimbursable Expenses and all charges for Basic Services and Additional Services to the extent that such charges are calculated on the basis of billable hourly rate(s) of the applicable employee(s). Such records shall be kept in accordance with generally accepted accounting principles and in accordance with applicable law, and shall be made available to the Owner or the Owner's authorized representative at the Consultant's office or at another mutually agreeable location upon seven (7) days prior notice during the term of this Agreement and thereafter as provided herein or required by law. If any audit, inspection or examination performed by or on behalf of the Owner discloses overcharges (of any nature) by the Consultant to the Owner, the Consultant shall immediately rebate to the Owner the total amount of such overcharge together with an overcharge assessment equal to ten percent (10%) of the overcharge amount. In addition, if the overcharge amount is equal to or greater than one percent (1%) of the total compensation for Basic Services payable by the Owner hereunder, the cost of the Owner's audit shall be reimbursed to the Owner by the Consultant.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Consultant as follows:

11.1 BASIC COMPENSATION

11.1.1 For Basic Services as described in Article 2, Basic Compensation shall not exceed Two-Hundred Forty-five-Thousand Dollars (\$245,000.00), payable on a monthly basis for actual services performed.

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 At the option of the Owner, compensation to the Consultant on account of Additional Services shall be on the basis of (i) an agreed lump sum amount, or (ii) the hourly billing rates set forth in **Exhibit D**, which billing rates are all-inclusive, or other billing rates agreed upon by the Owner and the Consultant. Whenever possible, and unless the Owner otherwise approves in writing, compensation to the Consultant on account of Additional Services shall be on the basis of agreed lump sum amounts. As used herein "direct personnel expense" means the direct salaries paid to the Consultant's and its Consultants' personnel engaged in performance of the services. The multiplier specified above includes all costs of

mandatory and customary contributions and benefits related to such direct salaries, such as employment taxes and other statutory employee benefits, insurance, employee retirement plans and similar contributions and benefits. Unless otherwise stated in the Owner's written authorization for the performance of Additional Services, the Consultant may request payment for Additional Services on a monthly basis based upon the services performed and costs incurred by the Consultant.

11.2.2 For Additional Services of Consultants, the Consultant's compensation shall be equal to the amounts billed to the Consultant for such services, subject to the provisions of Subparagraph 11.2.1.

11.2.3 The Town of Acton shall be responsible only to pay for Additional Services pertaining to the Project in Acton. The Towns of Carlisle and/or Westford shall be responsible to pay for Additional Services pertaining to the Project and performed under separate contract in those towns. All amounts for Additional Services shall be allocated accordingly on the Consultant's invoices.

11.3 REIMBURSABLE EXPENSES

11.3.1 For Reimbursable Expenses, as described in Paragraph 10.1, the reimbursement amount payable by the Owner shall be equal to a multiple of 1.10 times the actual direct cost. In the case of Reimbursable Expenses incurred by Consultants, only one mark-up shall be payable.

11.3.2 The Town of Acton shall be responsible only to pay for Reimbursable Expenses pertaining to the Project in Acton. The Towns of Carlisle and/or Westford shall be responsible under separate contract to pay for Reimbursable Expenses pertaining to the Project in those towns. All Reimbursable Expenses shall be allocated accordingly on the Consultant's invoices.

ARTICLE 12

OTHER CONDITIONS OR SERVICES

12.1 The Consultant shall maintain at the Consultant's expense, and shall file with the Owner a certificate evidencing, professional liability insurance issued by an insurance company admitted to conduct business in Massachusetts or a non-admitted company listed on the Massachusetts Insurance Commissioner's approved list, and otherwise acceptable to the Owner having minimum limits of \$500,000.00 for each claim and \$1,000,000.00 annual aggregate. Such professional liability insurance shall have a deductible not in excess of \$250,000, for which the Owner shall not be responsible, shall cover the negligent professional errors, omissions and acts of the Consultant and/or of any Consultant or other person or business entity engaged by the Consultant to provide services

in connection with this Agreement or for whose performance the Consultant is legally liable, and shall remain in full force and effect from the date hereof until substantial completion of the Project and for a period of six (6) years following completion of the Consultant's Services provided pursuant to this Agreement. The Consultant shall also maintain general liability insurance including contractual liability coverage with a combined single limit not less than \$1,000,000.00 each occurrence and \$2,000,000.00 annual aggregate. Such policies and certificates shall each include an endorsement stating that the issuing company shall mail at least thirty (30) days prior written notice to the Owner before cancellation, expiration without renewal, or material amendment of such policy, except that at least ten (10) days prior written notice shall be given to the Owner in the event of cancellation for non-payment of premium. The Consultant shall also maintain: (i) statutory workers' compensation coverage and occupational disease coverage in accordance with the laws of the Commonwealth of Massachusetts and the laws of any other jurisdiction to which the Consultant may be subject; and (ii) valuable papers insurance coverage. The Consultant shall require its Consultants to maintain similar insurance coverages as the Consultant is required to maintain under this Agreement, in amounts acceptable to the Owner. The Owner shall be included as an additional insured on the Consultant's insurance policies, except for professional liability and workers' compensation. The Consultant shall deliver signed original insurance certificates to the Owner evidencing all of the foregoing insurance at the execution of this Agreement and on an annual basis thereafter, and shall, if requested by the Owner, deliver to the Owner originals or certified copies of the required insurance policies.

12.2 The Consultant shall not employ additional consultants not identified in **Exhibit B**, nor subcontract, assign or transfer any part of its Services or other obligations under this Agreement without the prior written consent of the Owner. Written consent shall not in any way relieve the Consultant from its responsibility for the professional and technical accuracy and the coordination of all data, designs, Drawings, Specifications, estimates and other work or materials furnished hereunder.

12.3 Time is of the essence under this Agreement. The Consultant agrees to adhere to the time requirements and schedules included in this Agreement; to perform its services as expeditiously as is consistent with the standard of professional skill and care required hereby; and to perform its services in coordination with the operations of the Owner of this Project and with any of the Owner's Consultants in connection with the Project. It shall be the obligation of the Consultant to request any information necessary to be provided by the Owner for the performance of the Consultant's services. As liquidated damages (and not as a penalty) for the Consultant's failure to meet the Target Completion Date and Timeline included in **Exhibit A** (unless

said dates are extended in writing by the Owner), the Consultant shall be liable to the Town of Acton in the amount of \$500 per day for each day that the Consultant is late in meeting any such Target Completion Date and Timeline.

12.4 For purposes of this Agreement, staffing problems, insufficient financial resources, any default by a Consultant engaged by the Consultant or negligent errors or omissions by the Consultant or any of its Consultants shall not be considered causes beyond the control of the Consultant

12.5 The Consultant agrees as follows:

12.5.1 In connection with performance of the Services under this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, gender or disability. The Consultant shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the "Commission"), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

12.5.2 In connection with the performance of Services under this Agreement, the Consultant shall not discriminate in its relationships with consultants or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, gender or disability. In all the Consultant's solicitations for bids or proposals it shall notify in writing each potential consultant or supplier of the Consultant's obligations under this Paragraph 12.3, and it shall be a term of each contract with a consultant or supplier in connection with the performance of the Services under this Agreement that the consultant or supplier shall be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Consultant hereunder.

12.5.3 The Consultant shall comply with all applicable Laws and Regulations pertaining to non-discrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

12.5.4 The Consultant's non-compliance with any provision of this Paragraph 12.5 shall constitute a material breach of this Agreement, for which the Owner may, in its discretion, upon failure to cure said breach within thirty (30) days after written notice thereof, terminate this Agreement upon ten (10) days written notice. The Consultant shall indemnify and hold harmless the Owner from any claims and demands of third parties resulting from the Consultant's non-compliance with any of the provisions of this Paragraph 12.5 and in case of termination or cancellation of this Agreement, the Consultant shall indemnify the Owner during the remainder of the

original term against any loss and damage suffered by reason of such termination.

12.6 The Consultant shall keep confidential and shall not, without the Owner's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its work hereunder.

12.7 By execution of this Agreement, the Consultant incorporates herein by reference the truth-in-negotiation certificate filed with the Owner, and hereby confirms:

12.7.1 The wage (salary) rates and other costs used to support the Consultant's compensation are accurate, complete and current at the time of contracting; and

12.7.2 The Consultant agrees that the compensation hereunder may be adjusted within one (1) year of final completion of this Agreement to exclude any significant amounts if the Owner determines that the compensation was increased by such amounts due to inaccurate, incomplete or non-current wage (salary) rates or other costs.

12.8 By execution of this Agreement, the Consultant, pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, certifies under the penalties of perjury that it has, to the best knowledge and belief of the undersigned on the Consultant's behalf, filed all state tax returns and paid all state taxes required under law.

12.9 The Consultant acknowledges that the Owner is a municipality for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the Consultant agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Consultant based on said statute.

12.10 The Consultant hereby certifies that it has not given, offered or agreed to give, any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.

12.11 The Consultant hereby certifies that none of its Consultants or subcontractors have given, offered or agreed to give, any gift, contribution or offer of employment to the Consultant or to any other person, corporation or entity as an inducement for, or in connection with, the award to the Consultant or subcontractor of a contract by the Consultant.

12.12 The Consultant hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Consultant, has been retained or hired to solicit for, or in any way assist, the Consultant in obtaining this Agreement upon an agreement or understanding that such

a person, corporation or other entity be paid a fee or other consideration contingent upon the award of the Agreement.

12.13 The Consultant hereby certifies that neither the Consultant nor any of its affiliates is currently debarred or suspended by the Commonwealth of Massachusetts or any of its subdivisions, under any Commonwealth law, including, but not limited to Section 29F of Chapter 29, or Section 25C of Chapter 152.

12.14 The Consultant shall comply with all applicable requirements of M.G.L. c. 30, § 39R.

12.15 This agreement includes the Exhibits listed below, all of which are appended hereto and are as fully a part of this Agreement as if set forth or repeated herein.

Exhibit A Scope of Services, including Target Completion Date and Timeline

- Exhibit B** - Consultant's Consultants and Owner's Consultant's
- Exhibit C** - Key Personnel of Consultant and Primary Consultants
- Exhibit D** - Schedule of A/E Hourly Billing Rates
- Exhibit E** - Project Schedule
- Exhibit F** - Program Materials and Other Materials Provided by Owner
- Exhibit G** - Existing Data on Site and Subsurface Conditions (where available)
- Exhibit H** - Consultant's Fee Proposal

This Agreement entered into as of the day and year first written above.

TOWN OF ACTON

[Consultant]

By: _____
Don P. Johnson, Town Manager

By: _____
Signature

EXHIBIT A

**SCOPE OF SERVICES 25% DESIGN
Bruce Freeman Rail Trail
Acton Indoor Sports, Acton via Carlisle to Route 225, Westford**

EXHIBIT B
CONSULTANT'S CONSULTANTS AND OWNER'S CONSULTANTS

Approved Consultant's Consultants

Horsley Witten Group, Inc.

Lead Environmental Engineer

Richard Clayton, P.E.

Judith Nitsch Engineering, Inc.

Project Surveyor

Paul R. LeBaron

Owner's Consultants

none

EXHIBIT C

KEY PERSONNEL OF CONSULTANT AND PRIMARY CONSULTANTS

Principal – in-charge	Christer Ericsson, P.E.
Project Manager	Christer Ericsson, P.E.
Lead Civil Engineer	Rebecca S. Williamson, P.E.
Lead Traffic Engineer	John Diaz, P.E.
Lead Structural Engineer	Paul W. White, P.E.
Lead Landscape Architect	James Garrahan, R.L.A.
Lead Surveyor	Jeffrey Bradford, P.E., P.L.S.

EXHIBIT D

SCHEDULE OF A/E HOURLY BILLING RATES

EXHIBIT E
PROJECT SCHEDULE

EXHIBIT F

PROGRAM MATERIALS and OTHER MATERIALS PROVIDED BY OWNER

The following materials may be viewed at the Town of Acton Planning and Engineering Departments:

1. Bruce Freeman Rail Trail Feasibility Study, 2004 (<http://doc.acton-ma.gov/dsweb/Get/Document-11645/BFRT+2004+Feasibility+Study.pdf>).
2. Right of Way and Track Map of former Old Colony Railroad Co. Station 633+60 to Station 950+40; 6 sheets: <http://doc.acton-ma.gov/dsweb/View/Collection-1200>).
3. Lowell - Sudbury Bicycle Path Feasibility Study, 1987.
4. Town Atlas (assessors) Maps.
5. Deeds and record plans of abutting properties.

The following materials may be viewed at the Town of Westford Planning and Engineering Departments:

1. GIS mapping.

Other:

1. Friends of the Bruce Freeman Rail Trail website: www.brucefreemanrailtrail.org.

EXHIBIT G

**EXISTING DATA ON SITE AND SUBSURFACE CONDITIONS
(where available)**

none

EXHIBIT H

CONSULTANT’S FEE PROPOSAL, Acton

(submit separate fee proposals in this format to Carlisle and Westford;
 where a task does not apply enter \$0;
 enter reference where the cost of a task in 3(A) is included in another task in 3(B))
Breakdown of Professional Service Fees by Task and Sub-task of the Scope of Services

	<u>Fee for Sub-task</u>	<u>Fee for Task</u>	<u>Total Project Fee</u>
Sub-task 3(A)(1)			
Sub-task 3(A)(2)			
Sub-task 3(A)(3)			
Sub-task 3(A)(4)			
Sub-task 3(A)(5)			
Sub-task 3(A)(6)			
Sub-task 3(A)(7)			
Sub-task 3(A)(8)			
Sub-task 3(A)(9)			
Sub-task 3(A)(10)			
Sub-task 3(A)(10)			
Sub-task 3(A)(11)			
Sub-task 3(A)(12)			
Sub-task 3(A)(13)			
Task 3(A) Report			
Task 3(A)			
Sub-task 3(B)(1a)			
Sub-task 3(B)(1b)			
Sub-task 3(B)(1c)			
Sub-task 3(B)(1d)			
Sub-task 3(B)(1e)			
Sub-task 3(B)(1f)			
Sub-task 3(B)(1g)			
Sub-task 3(B)(1h)			
Sub-task 3(B)(1i)			
Task 3(B)(1) Report			
Task 3(B)(1)			
Sub-task 3(B)(2a)			
Sub-task 3(B)(2b)			
Sub-task 3(B)(2c.i)			
Sub-task 3(B)(2c.ii)			
Sub-task 3(B)(2c.iii)			
Sub-task 3(B)(2c.iv)			
Sub-task 3(B)(2c.v)			
Sub-task 3(B)(2c.vi)			
Sub-task 3(B)(2c.vii)			
Sub-task 3(B)(2d)			
Sub-task 3(B)(2e)			

	<u>Fee for Sub-task</u>	<u>Fee for Task</u>	<u>Total Project Fee</u>
Sub-task 3(B)(2f)			
Sub-task 3(B)(2g)			
Sub-task 3(B)(2h)			
Task 3(B)(2) Report			
Task 3(B)(2)			
Sub-task 3(B)(3a)			
Sub-task 3(B)(3b)			
Sub-task 3(B)(3c)			
Sub-task 3(B)(3d)			
Sub-task 3(B)(3e)			
Sub-task 3(B)(3f)			
Sub-task 3(B)(3g)			
Sub-task 3(B)(3h)			
Sub-task 3(B)(3i)			
Task 3(B)(3) Report			
Task 3(B)(3)			
Project Total			
<hr/>			
Task C. – Add-Alternate 1			
Task D. – Add-Alternate 2			
Task E. – Add-Alternate 3			

O'Reilly, Talbot & Okun

[A s s o c i a t e s]



**Technical Proposal, Environmental Services
Stow/Martin Street Property**

Respondent's Name:

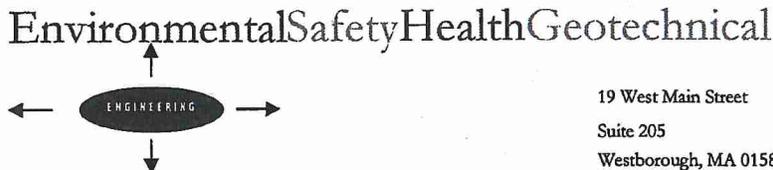
O'Reilly, Talbot, and Okun Associates, Inc.

August 12, 2010

Original

Environmental Safety Health Geotechnical

O'Reilly, Talbot & Okun
[A S S O C I A T E S]



19 West Main Street
Suite 205
Westborough, MA 01581
Tel 508 366 6409
Fax 508 366 9826
www.oto-env.com

P0022-23-01-02
August 12, 2010

Acton Town Manager
Town Hall
472 Main Street
Acton, MA 01720

Attn: Mr. Steven Ledoux
Acton Town Manager

Re: **TECHNICAL PROPOSAL**
2 Stow Street/90 Martin Street Parcel
Acton, Massachusetts

Dear Mr. Ledoux:

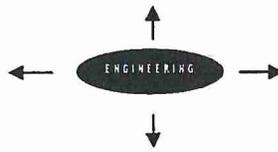
This submittal responds to the Request for Proposals (RFP) released August 6, 2010 for environmental services by the Town of Acton (herein referred to as the "Town"). The subject of the RFP is environmental assessment at the 2 Stow Street/ 90 Martin Street parcel, for which Phase I and Phase II environmental site assessments have been performed.

This submittal is the **TECHNICAL PROPOSAL**, and follows the outline in your RFP. As requested, a **PRICE PROPOSAL** has been submitted in a separate envelope.

A. COVER LETTER

O'Reilly, Talbot & Okun Associates, Inc. (OTO) is a thirty person environmental consulting firm with two offices in Massachusetts. This project will be staffed from our Westborough, Massachusetts office, an approximate 40 minute drive from the Site location. OTO is experienced in a variety of environmental technical practice areas. A complete description of OTO is contained at our website: www.oto-env.com. Of relevance to this project is the fact that we have seven Massachusetts Licensed Site Professionals (LSPs) on staff, as well as individuals with expertise in both human health and ecological risk assessment and remediation.

- The Principal In Charge for this project will be James Okun (LSP);
- The LSP in charge and Project Manager will be Bruce Nickelsen;
- The staff field scientist will be Andy Rolinger; and
- The human health and ecological risk assessors will be Debra Listernick and Jeff Park respectively. Resumes for these individuals are attached in Appendix A.



Each of these individuals can be reached at the letterhead address (19 West Main Street, Westborough, Massachusetts) at telephone number (508-366-6409).

Messrs. Okun and Nickelsen have authority to negotiate and contractually commit to all services.

Messrs. Okun, Nickelsen and Rolinger are familiar with the Site, having performed the ASTM Phase I Environmental Site Assessment.

We are not aware of issuance of any addenda to the RFP by the town of Action.

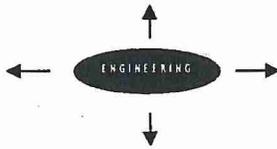
B. TABLE OF CONTENTS

A. COVER LETTER	Page 1
B. TABLE OF CONTENTS	Page 2
C. STATEMENT OF PROJECT UNDERSTANDING & APPROACH	Page 2
C.1 Understanding	Page 2
C.2 Approach	Page 4
D. SCOPE OF SERVICES	Page 4
E. PROJECT TEAM	Page 6
F. RELEVANT EXPERIENCE AND PRIOR PERFORMANCE	Page 6
G. GRANT SUBSIDIES	Page 8
H. REFERENCES	Page 8
I. COMPETING COMMITMENTS	Page 8
J. CERTIFICATES	Page 9

C. STATEMENT OF PROJECT UNDERSTANDING AND APPROACH

C.1 Understanding

We understand that the Town is particularly interested in recommendations regarding future uses which may lead to a more expeditious and cost-effective Permanent Solution pursuant to the MCP. The recommendations which we are able to make will depend upon the results of the proposed work and the Town's proposed use of the property. If for example the conditions identified at the Site are found to be exempt from MassDEP notification (through application of the ash and arsenic reporting exemptions), this would have an effect upon both the cost and time it takes to complete the project. The Town would still need to limit potential exposures to impacted soils, but this might be able to be accomplished through placement of the soils under the proposed (paved) parking lot (as an example). Keeping impacted soils on-site in a location where potential exposures would be controlled



or eliminated would save significant disposal costs, provided the Town was comfortable with this option.

Alternatively, if impacted soils at the Site are found to require MassDEP reporting (making the property a "Release Site") the extent of the release will need to be defined and a Condition of No Significant Risk documented either through risk assessment alone or following remediation and a risk assessment to show the significant risk has been eliminated. Impacted soils could still potentially remain on Site but might need an Activity and Use Limitation (AUL) to limit future exposures.

Based on our review of the Phase II Report, the proposed work must respond to the following:

1. The finding of polycyclic aromatic hydrocarbons (PAHs) and metals (arsenic, chromium and lead) at concentrations exceeding reporting standards in shallow soils; and
2. The finding of metals (chromium and lead) and PAHs in sediment at concentrations exceeding freshwater sediment screening criteria in the adjacent Mill Pond.

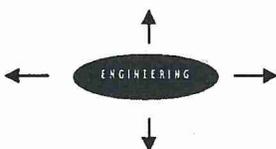
It is our understanding that the Town of Acton requires completion of the following four items by September 24, 2010 in order for the information to be available by the Town's September 28, 2010 Special Town Meeting:

1. Preparation of a Release Notification Form (if necessary);
2. Additional soil and sediment sampling to determine the nature and extent of the contamination;
3. Evaluation of remedial alternatives (such as soil removal or capping) if necessary to achieve a level of No Significant Risk; and
4. Formulation of a schedule, cost estimates and recommendations for site remediation to achieve a level of No Significant Risk in the most timely, efficient and cost effective manner.

We understand that the contract would be finalized and notice to proceed with the work would be provided from the Town by August 30, 2010 (which allows less than four weeks to perform these tasks).

Additional tasks to be performed under this project could include:

5. Possible use of the coal and wood ash reporting exemption or other reporting exemptions (such as the arsenic reporting exemption);
6. A risk characterization to evaluate potential Site risks and whether remediation is needed to attain a condition of No Significant Risk at the Site;
7. Preparation of bid specifications to perform the selected remedial alternative;



8. Preparation of closure documents such as the Response Action Outcome (RAO) report and Activity and Use Limitation (if appropriate); and
9. Other assessment and reports needed under the MCP.

C.2 Approach

With one exception, all of the soil and sediment samples which contained elevated concentrations of contaminants were shallow (two feet) samples. Deeper soil samples and groundwater samples from the installed wells did not indicate elevated metals, PAHs or volatile organic compounds (VOCs). We therefore propose a shallow soil and sediment sampling program to focus on analysis for the specific Contaminants of Concern (COCs) identified in the Phase II report (arsenic, chromium, lead and PAHs). These analyses will be used to determine the nature and extent of the contamination. If we believe a case can be made that the Site is exempt from reporting (using any of the reporting exemptions listed in 310 CMR 40.0317), we will advise you of this opinion.

With less than four weeks between expected authorization to proceed (August 30, 2010) and the date upon which Acton requires the information prior to the Special Town Meeting (September 24, 2010), we will only be able to perform one round of explorations. However, we have included a robust sampling and laboratory analysis program, since it has been our experience that a greater number of samples will provide greater certainty in our predictions regarding potential costs. The collected data will be compiled into a summary report which will:

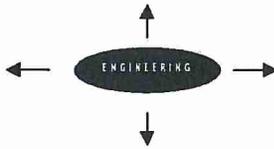
1. Describe and summarize the investigations performed;
2. Present our opinion as to whether a Release Notification must be submitted to the Massachusetts Department of Environmental Protection (MassDEP) or alternatively whether reporting exemption outlined in the Massachusetts Contingency Plan apply;
3. Present preliminary remedial alternatives, to the extent possible with the information collected; and
4. Provide a schedule, cost estimates and recommendations for site remediation to achieve a level of No Significant Risk to the extent possible with the information collected in a timely, efficient and cost effective manner.

D. SCOPE OF SERVICES

The following Scope of Services is proposed:

Task 1 – Digsafe and Health and Safety Plan Preparation

While only surficial soil and sediment sampling is planned, as a conservative measure we will perform DigSafe Notification, and wait the required three days before initiating explorations. A Site specific Health and Safety Plan will also be prepared under this task.



Task 2 – Soil and Sediment Sampling Program

The initial shallow soil sampling plan is intended to:

1. Evaluate whether the elevated PAHs and lead detected in shallow soils inside the former building footprint are subject to the ash exemption;
2. Determine the extent of the elevated PAHs and lead in shallow soils inside the former building footprint;
3. Evaluate the extent of the arsenic in shallow soils and whether the arsenic reporting exemption may apply; and
4. Collect a 4 to 5 foot soil sample from the MW-1 location for chromium analysis to show that chromium is not a COC.

The total number of soil samples to be collected and analyzed is therefore:

1. Two soil samples for Extractable Petroleum Hydrocarbons (EPH) and for ash analysis;
2. Twenty (20) soil samples for PAHs and lead analysis ;
3. Twelve (12) soil samples for arsenic analysis; and
4. One soil sample to be hand excavated from 4 to 5 feet below grade for trivalent and hexavalent chromium analysis.

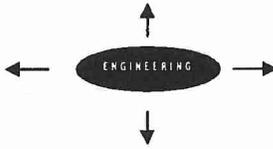
The initial sediment sampling plan is intended to:

1. Evaluate the extent of the apparent elevated chromium at sediment sample SD-1;
2. Evaluate the extent of the apparent elevated lead at sediment sample SD-4; and
3. Evaluate whether elevated PAHs are present in sediment at the SD-4 location.

The total number of sediment samples to be collected and analyzed is therefore:

1. Five sediment/soil samples for chromium analysis;
2. Five sediment/soil samples for lead analysis;
3. One sediment sample for PAH analysis using the Selective Ion Monitoring (SIM) method to achieve the lower detection limits needed for sediment PAH analyses.

Assuming Notification to Proceed by August 30, following DigSafe Notification, samples would be collected by Friday September 2, 2010. Results would be received and evaluated by Wednesday, September 15. The data collected will be used to prepare the report described below under Task 3.



Task 3 – Report Preparation

Under this task we will prepare a summary report which will:

1. Describe and summarize the investigations performed;
2. Present our opinion as to whether a Release Notification must be submitted to the Massachusetts Department of Environmental Protection (MassDEP) or alternatively whether reporting exemptions outlined in the Massachusetts Contingency Plan (MCP) apply;
3. Present preliminary remedial alternatives, to the extent possible with the information collected; and
4. Provide a schedule, cost estimates and recommendations for site remediation to achieve a level of No Significant Risk to the extent possible with the information collected in a timely, efficient and cost effective manner.

Task 4 – Optional Meeting

Under this optional task we would prepare for and attend a meeting with the Town of Acton prior to the August 28, 2010 Special Town Meeting.

E. PROJECT TEAM

The Project Team has been presented above under Section A.COVER LETTER.

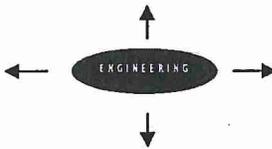
F. RELEVANT EXPERIENCE AND PRIOR PERFORMANCE

The following projects illustrate our qualifications for the Project by demonstrating work for municipal clients, local experience, a broad range of project types and the ability to reach a regulatory end point. We have chosen to list the two most recent Response Action Outcomes filed by us for the Town of Acton first:

Acton, Massachusetts, DPW

This project entailed remediation of a former dry well located at the Acton Department of Public Works facility. A class A-2 Response Action Outcome (RAO) was filed by Bruce Nickelsen as LSP of Record for the project in February, 2004, seven months following the release notification in July, 2003. The work entailed removal of the former dry well, confirmation soil sampling, groundwater monitoring and preparation and submittal of the RAO report (and included installation of a new tight tank). Completion of the project in less than one year allowed the Town of Acton to avoid paying annual compliance fees.

Reference: Doug Halley, Acton Health Department Director, Phone: (978)264-9634



Acton, Massachusetts, Willow Street Residence

Completion of an Environmental Site Assessment for the Town of Acton on a property taken by the Town indicated a release of gasoline had occurred. The release was believed to have been derived from a surface spill, which resulted in an estimated 800 square foot area of impacted soils located between approximately 7 and 13 feet below grade. The MassDEP was notified of the release. Excavations were performed under a Release Abatement Measure, which removed approximately 20 cubic yards of gasoline impacted soil. A dissolved gasoline plume was found to extend approximately 150 feet in the downgradient groundwater flow direction onto two additional properties. Soil gas screening on the additional properties indicated no indoor air impacts. A risk characterization was completed to support a Permanent Solution in the form of a Class A-2 Response Action Outcome (RAO) filed by Bruce Nickelsen as LSP of Record in June 2002. The RAO was audited by the MassDEP in 2003, which resulted in no changes to the project outcome.

Reference: Doug Halley, Acton Health Department Director, Phone: (978)264-9634

Waltham, Massachusetts, Metropolitan State Hospital

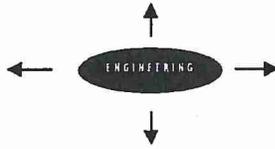
Response actions at this State owned former State Hospital property entailed evaluation of the extent of solid waste which had been disposed adjacent to a wetland and stream, removal of over 15,000 tons of the waste (as remediation waste) and 28 tons of hazardous waste, evaluation of remaining Contaminants of Concern in soil, groundwater, surface water and sediment following the removal, preparation of both human health and ecological risk assessments, and filing a Phase II Comprehensive Environmental Site Assessment with a Class A-2 RAO in June, 2010 by LSP of Record Bruce Nickelsen.

Reference: John O'Donnell, Massachusetts Division of Capital Asset Management, (617)727-4030

Westborough, Massachusetts, Turnpike Park

This project has entailed working with a manufactured home cooperative. An environmental site assessment performed by OTO discovered solvent and petroleum releases on the property. Despite these findings the cooperative wanted to own their own residences and decided to proceed with acquisition of the property. Bruce Nickelsen has served as LSP of record for the submittal of the Phase I Tier IC classification in August, 2009, and ongoing response actions in 2010.

Reference: Fred Forte, President, Turnpike Park Cooperative, Phone: (508)366-4191.



Westborough, Massachusetts, Residential Fuel Oil Spill

This project entailed a rapid response to a residential fuel oil release to prevent migration towards a neighboring property and towards the Town Zone II in 2007. The entire basement floor was removed along with underlying soils, the floor was replaced and a Permanent Solution class A-2 RAO filed in less than 120 days by LSP of record Bruce Nickelsen, eliminating the need to pay an RAO fee or any annual compliance fees.

Reference: Lenard Antcil, Westborough Resident, Phone: (508)898-2712

G. GRANT SUBSIDIES

In researching potential subsidies, grants, reimbursements or other funds available to fund assessment, containment or removal actions at the Site we contacted the United States Environmental Protection Agency Chief of the Brownfield Section for the New England area, Ms. Carol Goldsbury Tucker. Ms. Tucker indicated that most of EPA's Brownfield grants are available to municipalities for assessment and remediation work. She suggested we discuss potential liability and eligibility requirements with Mr. Jim Byrne (also of EPA) who was not available prior to submittal of this RFP. She encouraged attendance at one of EPA's outreach sessions coming up in September (which have not yet been scheduled). She indicated these sessions review everything an applicant needs to know to apply for Brownfield funding. Specifics on times for these sessions are published when available at www.epa.gov/region1/brownfields/index.html.

H. REFERENCES

References are included above in Section **F. RELEVANT EXPERIENCE AND PRIOR PERFORMANCE**.

I. COMPETING COMMITMENTS

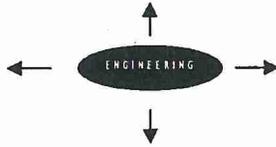
We are not aware of competing commitments which would prevent us from meeting the report deadlines contained herein. While we have identified a project team, should unforeseen events arise which put timely completion of the proposed work at risk, we will discuss the possible substitution of team members by equally qualified individuals with you.

J. CERTIFICATES

A signed copy of the certificate of non-collusion and tax compliance form is attached to this proposal in Appendix B.

We believe this submittal responds to the requirements for the **TECHNICAL PROPOSAL** as outlined in your August 6, 2010 RFP. As stipulated, a copy of the **PRICE PROPOSAL** has been provided in a separate envelope.

O'Reilly, Talbot & Okun
[A S S O C I A T E S]



Please feel free to call the undersigned with any questions or comments.

Very truly yours,
O'Reilly, Talbot & Okun Associates, Inc.

James D. Okun, LSP
Principal

Bruce H. Nickelsen, LSP
Associate

Attachments:
Appendix A - Resumes
Appendix B - Certificate of non-collusion and tax compliance

APPENDIX A

James D. Okun, LSP

PRINCIPAL

AREAS OF EXPERTISE

- Risk-Based Decision Support
- Massachusetts Contingency Plan (MCP) Compliance
- Environmental Remediation Services

PROFILE

Jim Okun, managing principal of OTO, has practiced in the environmental field for over 25 years. He has a technical background in risk assessment, environmental chemistry and toxicology. In addition to consulting, Jim's experience includes work for the U.S. Environmental Protection Agency Region 1 (New England) in the CERCLA, RCRA, TSCA and FIFRA regulatory programs. He has been active in several organizations, including the Licensed Site Professional Association (LSPA) and the Connecticut River Watershed Council.

PROJECT EXPERIENCE

Millbury MA, Perchlorate in Water Supply

Millbury, Massachusetts, *ongoing*

Serving as LSP for an explosives based release of perchlorate which has impacted a public water supply. Managing the investigation and remediation planning process. Developing verification guidelines to permit a determination of when cleanup criteria have been achieved.

New Worcester Trial Court

Worcester, Massachusetts, *2007*

Recycled and treated contaminated soil during construction of a new courthouse, thus minimizing the amount of waste going into landfills. Protected building occupants by designing and installing a sub-slab venting system and vapor barrier beneath the structure's footprint. Awarded a Central Massachusetts "Green Award" by the *Worcester Business Journal*.

Worcester State Hospital BUD

Worcester, Massachusetts, *2008*

As LSP, designed a Beneficial Use Determination plan to remove and treat hazardous materials from Worcester State Hospital buildings prior to their demolition. Recycled materials from the old, unused structures to be used as the construction fill to raise the soil grade for construction of a new Massachusetts State Psychiatric Facility. Reduced costs and conserved 20,000 cubic yards of landfill capacity.

Hingham Ship Yard

Hingham, Massachusetts, *2008*

LSP for remediation and risk characterization at a contaminated shipyard being redeveloped for commercial and residential use. Excavated contaminated soil to provide a cost-effective alternative to an expensive soil-leaching technique suggested by the client's original consultant.

REGISTRATIONS and AFFILIATIONS

- Licensed Site Professional (LSP), Massachusetts
- Chairman, Connecticut River Watershed Council
- Former Director, Licensed Site Professional Association (LSPA)
- Former Member, Board of Education, Ellington, CT
- Connecticut Low Level Radioactive Waste Advisory Committee, Member
- Society of Risk Analysis, Member

EDUCATION

- M.S., Toxicology, Massachusetts Institute of Technology, *1978*
- B.S., Chemistry, Massachusetts Institute of Technology, *1975*

okun@oto-env.com
phone:413.788.6222
fax:413.788.8830
www.oto-env.com

Bruce H. Nickelsen

ASSOCIATE

AREAS OF EXPERTISE

- Facility Assessments and Compliance
- Massachusetts Contingency Plan (MCP) Compliance
- Environmental Remediation Services
- Geology / Hydrogeology
- Beneficial Use Determinations

PROFILE

Geologist Bruce Nickelsen has more than 20 years of experience conducting environmental assessments and managing remediation projects. His work frequently includes hydrogeological and remedial characterizations. Bruce has consulted on hundreds of projects in New England, the Mid-Atlantic States, the South and the Midwest. He also has conducted many pre-transaction environmental assessments on commercial, industrial and residential properties.

PROJECT EXPERIENCE

Industrial Site

North Adams, Massachusetts, *ongoing*

As project manager, completed Assessment and Evaluation of Remedial Alternatives at this polychlorinated biphenyl (PCB)-impacted, former electrical transformer recycling facility. Provided litigation support during pursuit of potentially responsible parties and negotiations with Massachusetts Department of Environmental Protection (MassDEP). Developed remedial solution that included excavation and off-site disposal of the most heavily PCB-impacted soils, as well as placement of concrete cap over remaining soils. The site is currently under remediation pending removal of a floating oil layer.

Residential Property

Marlborough, Massachusetts, *2007*

As project LSP, oversaw clean up at this single-family residence where 600 gallons of fuel oil leaked into a sand and gravel aquifer. Remediation consisted of excavating soils (500 tons) over a distance of approximately 200 feet and pumping 1,000 gallons of mixed oil and groundwater. The house was supported and a section of the basement foundation wall removed to complete the excavation after which, approximately 3,000 gallons of chemical oxidant was used as a polishing step. Result: Class A Response Action Outcome.

Industrial Site

Springfield, Massachusetts, *2002*

As project LSP, conducted facility assessment and developed remedial solution. Managed excavation and off-site disposal of soils with PCB concentrations greater than 100 parts per million. Directed construction of asphalt pavement and cap and placement of Activity and Use Limitation to control future activities.

REGISTRATIONS and AFFILIATIONS

- Licensed Site Professional (LSP), Massachusetts
- Licensed Environmental Professional (LEP), Connecticut
- National Water Well Association, Member
- Licensed Site Professional Association (LSPA), Member
- Environmental Professionals Organization of Connecticut (EPOC), Member

EDUCATION

- Graduate Study, Hydrogeology, University of Connecticut, 1987 - 1988
- M.A., Geology, SUNY Binghamton, 1983
- B.A., Geology, Dartmouth College, 1979

nickelsen@oto-env.com
phone: 508.366.6409
fax: 508.366.9826
www.oto-env.com

Debra M. Listernick

ASSOCIATE/SENIOR RISK ASSESSOR

AREAS OF EXPERTISE

- Risk Assessment
- Massachusetts Contingency Plan (MCP) Compliance
- CERCLA (Superfund) Compliance

PROFILE

Debra Listernick is a senior risk assessment specialist with degrees in biology and toxicology. She has over 20 years experience managing risk assessment projects under the Massachusetts Department of Environmental Protection (MassDEP) Massachusetts Contingency Plan (MCP) and United States Environmental Protection Agency (USEPA) Superfund (CERCLA) Program.

PROJECT EXPERIENCE

Cushing, Jammallo & Wheeler, Inc.

Westborough, Massachusetts, 2006 - 2008

Serving as human health risk assessor evaluating the potential exposures and risks to construction and utility workers involved in site demolition and redevelopment of this former industrial complex being redeveloped as a large, high-end retail center. In addition, evaluating the potential exposures and risks from soil and indoor air exposures to site workers and the general public who would be working and shopping at the retail center after site development. Assisting with short-term decisions as to whether soils that were excavated during grading and excavation for utilities could be reused on-site or were required to be disposed off-site.

Groundwater & Environmental Services (GES)

Multiple Sites in Massachusetts, 1998 - ongoing

Serving as risk assessment subcontractor to environmental consulting firm that provides MCP site investigation and remediation services to Exxon Mobil Corporation. Developing risk-based options for investigation and remediation strategies for gasoline service stations. Evaluating potential human health and environmental risks associated with potential volatile and extractable petroleum hydrocarbon (VPH/EPH) releases to soil, groundwater, air, and surface water. Completing Imminent Hazard Evaluations, Substantial Hazard Evaluations and Method 3 Risk Characterizations in support of Response Action Outcomes.

Various LSPs/Consulting Firms throughout Massachusetts

Vapor Intrusion at Sites with VOCs, ongoing

Serving as risk assessment subcontractor assisting in the investigation and evaluation of vapor intrusion at sites with volatile organic compounds (VOCs) in the subsurface, in particular, tetrachloroethylene (PCE). Assisting in developing soil gas and indoor air sampling strategies, modeling of soil gas data using the Johnson & Ettinger Vapor Intrusion model, evaluating inhalation risks to building occupants, and assisting in formulating recommendations for risk mitigation goals.

AFFILIATIONS

- Licensed Site Professional Association (LSPA), Associate Member, Loss Prevention Committee - 2006 to present
- MassDEP Indoor Air and NAPL Workgroups - 2009 to 2010
- Society for Risk Analysis, New England Chapter, Member
- Society of American Military Engineers (SAME), Member, Outreach Committee - 2006 to 2009
- Organization for the Assabet River (OAR), Water Quality Monitor - 1999 to present
- SUASCO Watershed Community Council Steering Committee, OAR rep. - 2003 to 2006; OTO rep. - 2007 to present
- Citizens for Research and Environmental Watch (CREW) (Starmet Superfund Site): 2001 to 2005

EDUCATION

- M.P.H., Toxicology and Env. Health Policy, University of Michigan, 1985
- B.A., Biology and Env. Studies, University of Vermont, 1980

listernick@oto-env.com
phone: 508.366.6409
fax: 508.366.9826
www.oto-env.com

Jeffrey J. Park

SENIOR ECOLOGIST

AREAS OF EXPERTISE

- Quantitative Ecological Studies and Impact Assessments
- Ecological Risk Assessment
- Biostatistics and Mathematical Biology

PROFILE

Jeffrey Park is a Senior Ecologist with 10 years of experience conducting ecological impact assessments for a diverse group of taxa including plants, fishes, amphibians, benthic macroinvertebrates, phytoplankton, zooplankton and macroalgae. Ecological studies have quantitatively assessed: (1) spatial and temporal patterns in abundance and species composition; (2) abiotic interactions; and (3) risk to ecological receptors associated with chemical compounds. Jeff's project experience has included "measures of effect" studies associated with ecological risk assessments (MCP and CERCLA) and impact assessments geared at disentangling project-related effects from natural variation. Biostatistics are a keystone feature of these various studies.

PROJECT EXPERIENCE

Pleasant Maintenance Corporation

Easthampton, MA 2008 - 2009

Currently conducting a Method 3 Stage II ecological risk assessment at a PAH impacted site situated along a pond. Collected sediment and surface water samples, benthic invertebrates, and sediment toxicity. Also conducted a habitat characterization and identified ecological receptors. A quantitative assessment of community metrics, sediment toxicity and the effects of PAHs, will be conducted.

Scrapmetal Yard

Clinton, MA 2008

Currently conducting a Method 3 Stage I ecological risk assessment at a scrapmetal yard situated along the South Nashua River. Conducted a habitat characterization and identified ecological receptors. Used a combination of an effects-based screening process and the frequency of detection to identify COCs. The results of the screening level assessment indicate that there is readily apparent harm associated with surface water and groundwater.

Norwich Harbor Combined Sewer Overflow (CSO) Impact Study

Norwich, CT, 2008

Evaluated the impact of CSO discharge on benthic invertebrate and fish communities. The study successfully identified CSOs that were excellent candidates for repair given their proximity to known recreational areas and degraded aquatic habitat.

Third Party Critical Review of MCP Environmental Risk Characterization (ERC)

Rowe, MA, 2007

Provided critical third party review of an Environmental Risk Characterization (ERC) conducted at a former nuclear facility. Directed critical comments at receptor identification; COPC selection; and problems associated with the selection of fishes for tissue analysis amongst other topics.

FAA CERCLA (Superfund) Site, Ecological Risk Assessment, Effect Study

Atlantic City, NJ 2005

Examined the effects of mercury (Hg) contamination and 14 habitat parameters on breeding anuran populations. Sampled Habitat properties within a total of 14 breeding sites and concluded that light levels, water temperature, and pH are more proximate to the distribution of anurans than surface water Hg concentrations.

REGISTRATIONS and AFFILIATIONS

- 40-Hour OSHA
HAZWOPER
Training, 1995

EDUCATION

- M.A., Biology,
Harvard
University, 1998
- B.A.,
Anthropology,
University of
Maine, 1993

park@oto-env.com
phone:508.366.6409
fax:508.366.9826
www.oto-env.com

APPENDIX B

CERTIFICATE OF NON-COLLUSION

The undersigned hereby certifies under the penalties of perjury that this bid or proposal is in all respects bona fide, fair and has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certificate, the word person shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.



Signature of person signing the bid or proposal

O'Reilly, Talbot & Okun Associates, Inc.

Name of business

CERTIFICATE OF TAX COMPLIANCE

Pursuant to Ch.62C, S.49A (b) of the Massachusetts General Laws, I,

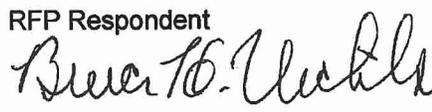
Bruce H. Nickelsen, authorized signatory for
(name)

O'Reilly, Talbot & Okun Associates, Inc., do hereby certify under the pains and penalties
(name of RFP Respondent)

of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes and has filed all state tax returns and paid all State taxes required under law.

8/13/2010
Date

04-3228814
Social Security Number or
Federal ID Number of RFP Respondent

RFP Respondent

Signature of Authorized
Representative of RFP Respondent

Associate
Title

EXHIBIT B

EXHIBIT B

CONSULTANT'S CONSULTANTS AND OWNER'S CONSULTANTS

Approved Consultant's Consultants

Alpha Analytical Labs, Inc.
Contest Laboratories, Inc.

Owner's Consultants

none

EXHIBIT C

EXHIBIT C

KEY PERSONNEL OF CONSULTANT AND PRIMARY CONSULTANTS

Principal-in-charge	James Okun, LSP
LSP in Charge/Project Manager	Bruce Nickelsen.
Staff Field Scientist	Andy Rolinger
Risk Assessor	Debra Listernick
Risk Assessor	Jeff Park

EXHIBIT D

EXHIBIT D

SCHEDULE OF HOURLY BILLING RATES AND UNIT PRICES

O'REILLY, TALBOT & OKUN ASSOCIATES, INC.
Schedule of Fees
Effective January 1, 2010

<u>BILLING RATES FOR PROFESSIONAL SERVICES</u>	<u>RATES</u>
Principals (includes LSPs and PEs)	\$155/Hour
Associates	\$130/Hour
Sr. Project Manager/Sr. Technical Specialist	\$120/Hour
Project Manager/ Technical Specialist	\$105/Hour
Engineer/Scientist, Level 2	\$85/Hour
Engineer/Scientist, Level 1	\$70/Hour
CADD Operator	\$65/Hour
Technician	\$50/Hour
Administrative	\$45/Hour

DAILY EQUIPMENT RENTAL/USE RATES

Truck Rental	\$100/Day
AirOCell Cassettes	\$55/Cassette
DO Meter	\$30/Day
Hammer Drill	\$35/Day
Hand Auger	\$25/Day
IAQ Monitoring Instruments	\$75/Day
Interface Probe	\$50/Day
LEL Meter	\$35/Day
Low Flow – Inc all equip	\$200/Day
Metal Detector	\$30/Day
ORP Meter	\$25/Day
P-Trak Particulate Meter	\$150/Day
pH & Conductivity Meter	\$30/Day
Photoionization Detector	\$90/Day
Pump and Tubing	\$35/Day
Soil Gas Sampling inc PID	\$125/Day
Specific Conductivity Meter	\$35/Day
Survey Equipment	\$35/Day
Water Level Indicator	\$35/Day
Bailers	\$25/Each
Groundwater Filters	\$25/Each
PIG Brand Skimmers	\$5/Each
Tedlar Sample Bags	\$25/Each
Well Point – Coupling	\$20/Each
Well Point – Pipe Segments	\$35/Each
Well Point – Screen	\$145/Each

OTHER EXPENSES

OTO Cost plus 15%
 Report Reproduction

20¢/page

UNIT PRICES

Description	Rate
Personnel	
• Principal	155/hr
• LSP	130-155/hr
• Project Manager	105/hr
• Senior Professional	85/hr
• Geologist	70/hr
Equipment	
• Photoionization Detector	90/day
• Combo Meter/DO/pH/T/Redox/Cond. w/data logger	150/day
Drilling	1,800/day
• Drilling Rig extra day rate	290/hr
• Overtime Rate per hour/per crew	
Laboratory Analysis	
Soil/Sediment (per sample)	
• Arsenic	25.00
• Chromium	25.00
• Lead	25.00
• Polynuclear Aromatic Hydrocarbons	125.00
Groundwater (per sample)	
• Arsenic	12.00
• Chromium	12.00
• Lead	12.00
• Polynuclear Aromatic Hydrocarbons	125.00
• pH	12.00

Note - All rates in U.S. Dollars

EXHIBIT E

EXHIBIT E
PROJECT SCHEDULE

<u>Date</u>	<u>Milestone Event</u>
August 30, 2010	Notice to Proceed Issued
September 24, 2010	Basic Services Completed
December 31, 2010	Additional Services Requested By Owner Completed, unless extended by written agreement of the parties

EXHIBIT F

EXHIBIT F

PROGRAM MATERIALS and OTHER MATERIALS PROVIDED BY OWNER

1. ASTM Phase I Environmental Site Assessment prepared by O'Reilly, Talbot & Okun Associates, Inc., dated March 24, 2010; and
2. ASTM Phase II Environmental Site Assessment prepared by Groundwater & Environmental Services, Inc. dated June 7, 2010

EXHIBIT G

EXHIBIT G

EXISTING DATA ON SITE AND SUBSURFACE CONDITIONS

See Exhibit F

EXHIBIT H

EXHIBIT H

CONSULTANT'S FEE PROPOSAL

Table 1 – Price Proposal for Basic Services

Attachment A – Price Proposal Form

Table 1 - Price Proposal
 August 6, 2010 RFP
 2 Stow Street/90 Martin Street
 Acton, MA

Labor	Jim Okun	Bruce Nickelsen	Andy Rollinger	Administrative	Totals
Task 1.0	Digsafe and HASP Preparation				
hours	0	2	0	2	4
rate	\$155	\$130	\$85	\$45	
Fee	\$0	\$260	\$0	\$90	\$350
Task 2.0	Soil and Sediment Sampling Plan				
hours	2	10	10	2	24
rate	\$155	\$130	\$85	\$45	
Fee	\$310	\$1,300	\$850	\$90	\$2,550
Task 3.0	Report Preparation				
hours	2	18	4	2	26
rate	\$155	\$130	\$85	\$45	
Fee	\$310	\$2,340	\$340	\$90	\$3,080
Task 4.0	Meeting (Optional)				
hours	4	4	0	0	
rate	\$155	\$130	\$85	\$45	
Fee	\$620	\$520	\$0	\$0	\$1,140
Total Labor Fee (without optional meeting)					\$5,980
Expenses	Quantity	Rate			Total
Task 1.0					
Travel		\$50.00			\$50
Task 2.0					
Travel		\$100.00			\$100
EPH and Ash Anal. -Soil	2	\$550.00			\$1,100
PAHs and lead-Soil	20	\$150.00			\$3,000
Arsenic-Soil	12	\$25.00			\$300
Chromium-Soil	1	\$100.00			\$100
Chromium-Sediment	5	\$25.00			\$125
Lead-Sediment	5	\$25.00			\$125
PAH(SIM)-Sediment	1	\$125.00			\$125
Task 2.0 Total					\$5,025
Task 3.0					
No Expenses					
Task 4.0					
Travel		\$50.00			\$50
Total Expenses (without optional meeting)					\$5,025
Project Budget					\$11,005

Project Budget Including
 Optional Meeting

\$12,145

ATTACHMENT A – PRICE PROPOSAL FORM

Breakdown of Professional Service Fees by Task and Sub-task

Name of Proposer: O'Reilly, Talbot & Okun Associates, Inc.

INSTRUCTIONS:

1. PROVIDE INFORMATION FOR ALL OF THE TASKS AND SUB-TASKS INCLUDED IN THE RESPONDENT'S PROPOSED SCOPE OF SERVICES SUBMITTED IN RESPONSE TO THE RFP, INCLUDING BUT NOT LIMITED TO THE LIST BELOW – ADD ADDITIONAL SHEETS TO THE EXTENT NECESSARY.

2. NOTE: THE TOWN WILL ONLY PAY THE SUCCESSFUL RESPONDENT FOR SERVICES ACTUALLY RENDERED AND ACTIVITIES ACTUALLY PERFORMED, NOT FOR EACH ACTIVITY LISTED ON THIS PRICE PROPOSAL FORM. THE PRICE PROPOSAL IS A NOT TO EXCEED PRICE FOR EACH LINE ITEM, NOT A FIXED PRICE FOR THE ENTIRE CONTRACT. THE SUCCESSFUL RFP RESPONDENT SHALL ONLY PERFORM AND INVOICE FOR THOSE SERVICES AND ACTIVITIES LISTED IN THE CONTRACTED SCOPE OF SERVICES THAT ARE SPECIFICALLY AND SEPARATELY AUTHORIZED BY THE TOWN MANAGER AND PERFORMED BY THE SUCCESSFUL RFP RESPONDENT.

<u>Task Description</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
Preparation of a Release Notification Form (if necessary)			
Sub-Total			300
<hr/>			
Sampling to determine the nature and extent of the soil and sediment contamination			
• Digsafe	100	50	150
• HASP	250	0	250
• Well Installation (Specify Number and Location) (if any)	0	0	0
• Soil Borings (Specify Number and Location)	0	0	0
• Soil Samples (Specify Number, Location, Depths) *	1,275	0	1,275
• Sediment Samples (Specify Number, Location, Depths)	1,275	0	1,275
• Groundwater Samples (Specify Number, Location, Depths) (If any)	0	0	0
• Analytical Fees (Specify All Parameters Analyzed) *	0	4,975	4,975
• MCP Phase II Report Preparation	0	0	0
• Other	0	0	0
Sub-Total	2,900	5,025	7,925
<hr/>			
Evaluation to determine if the site falls under the MCP's coal and wood ash exemption -Includes above program			
• Sampling and Analytical Fees Included above	0	0	0
• Report Preparation	3,080	0	3,080
• Other	0	0	0
Sub-Total	3,080	0	3,080

\$11,005**

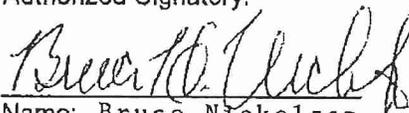
* - See Technical Proposal

** - Sampling and evaluation total for 9/24/10 Report Due Date

Task Description	Fees	Expenses	Total
Risk characterization to determine the level of risk and the need (if any) for site remediation -Assumes Method 1			
• Sampling and Analytical Fees	0	0	0
• Report Preparation	1,500	0	1,500
• Other	0	0	0
Sub-Total	1,500	0	1,500
Evaluation of remedial alternatives (such as soil removal or capping) if necessary to achieve a level of no significant risk			
• Recommendations for site remediation to achieve a level of no significant risk in the most cost-effective manner -Sept. 24, 2010 Report			0
• RAM Plan			2,410
• MCP Phase III Report Preparation			7,120
• Preparation of a bid specification for the performance of the selected remedial alternative (if any) to be included in a future invitation for bids for the performance of such work if required			3,000
• Other			0
Sub-Total			12,530
Site Closure Documentation			
• Response Action Outcome Statement A-2 RAO			3,405
• Activity and Use Limitation (if appropriate)			5,450
• Other			
Sub-Total			8,855
Other assessment activities and reports as may be necessary under the MCP (List with Specificity) -See Technical Prop.			
•			
•			
•			
•			
Sub-Total			
PROJECT TOTAL			32,390

3. In the event services are required other than those listed in the above table, they will be provided at the Unit Prices on the attached list and will be performed if and only if authorized by the Acton Town Manager.

Authorized Signatory:



Name: Bruce Nickelsen

Position: Associate