FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

This FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made as of the 13th day of July 2010 by and between Mary Ann Caouette, Frances Simeone and John E. Simeone, individually and as trustees of The Simeone Irrevocable Trust u/d/t dated November 17, 1998 and recorded with the Middlesex South Registry of Deeds at Book 31063, Page 219, with a mailing address care of Mary Ann Caouette, 10 Stow Street, Acton, MA 01720 (collectively, the "Seller"), and the Town of Acton, 472 Main Street, Acton, MA 01720 (the "Buyer").

WHEREAS, Seller and Buyer entered into that certain Purchase and Sale Agreement dated as of April 26, 2010 in connection with the conveyance of a certain parcel of vacant land off of Martin Street and Stow Street in Acton (the "Initial Agreement"); and

WHEREAS, pursuant to that certain Amendment to Purchase and Sale Agreement dated June 9, 2010, the parties extended the initial closing date to 10 A.M. on June 21, 2010 (the "First Amendment"); and

WHEREAS, pursuant to that certain Second Amendment to Purchase and Sale Agreement dated June 21, 2010, the parties further extended said closing date to 10 A.M. on July 7, 2010 (the "Second Amendment"); and

WHEREAS, pursuant to that certain Third Amendment to Purchase and Sale Agreement dated July 7, 2010, the parties further extended said closing date to 5 P.M. on July 13, 2010 (the "Third Amendment", together with the Initial Agreement, the First Amendment and the Second Amendment, the "Agreement"); and

WHEREAS, as part of Buyer's due diligence, Buyer's consultants have discovered reportable levels of environmental contamination on the premises; and

WHEREAS, the draft Approval Not Required plan of the premises that was prepared under Section 16 of the Agreement indicates that the premises contains approximately 9.6 acres rather than 11.7 acres; and

WHEREAS, the parties wish to amend the Agreement to reflect new, mutually agreeable terms for addressing the environmental contamination and lot area issues identified above as well as establishing a new closing date.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Premises Description. The first sentence of Section 2 of the Agreement is hereby deleted and replaced with "The land containing approximately 9.6 acres as shown on the draft Approval Not Required Plan attached hereto as Exhibit A."

2. Closing Schedule. The time for closing under the Agreement is extended from 5 P.M. on July 13, 2010 to 10 A.M. on October 12, 2010, and Buyer shall pay Seller $12,500 as consideration for said extension upon the execution of this Amendment. Buyer shall be entitled, at Buyer's option, to extend the time for closing for up to two (2) additional periods of 30 days each upon notice to Seller and the payment of $5,000 for each such extension period, provided that there has been a Special Town Meeting vote approving the purchase of the premises, as set forth in Section 8 herein, and Buyer is reasonably satisfied that any environmental remediation for the premises can be accomplished for $200,000 or less.

3. ANR Plan. The second sentence of Section 16 of the Agreement is hereby deleted and replaced with "The parties shall work together diligently and in good faith to complete an Approval Not Required plan of the premises based on the plan attached hereto as Exhibit A."

4. Conservation Restriction. The area of the house lot at 90 Martin Street that shall be subjected to a conservation restriction as provided in Section 17 of the Agreement is amended to the area south of the "Proposed Conservation Restriction Line" on "Proposed Lot 161,566 ±S.F. 3.7090 ±AC," as shown on the plan attached hereto as Exhibit A.

5. Environmental Testing and Remediation. Buyer has issued the request for proposals for additional environmental testing and remediation recommendations attached hereto as Exhibit E, and Buyer shall contract for said work at Buyer's sole cost and expense. Buyer shall pay for the first $200,000 of any environmental remediation that is required to achieve an expeditious and cost-effective permanent solution for the reportable environmental contamination on the premises consistent with the Massachusetts Contingency Plan and the future use of the property as publicly-owned open space, recreation and conservation land, provided such remediation is reasonably possible. If any such environmental remediation is in excess of $200,000, then Buyer may elect to engage in discussions with Seller concerning payment of the excess remediation costs or terminate the Agreement, as amended. Buyer will regularly consult with the Seller concerning environmental matters during the term of the Agreement.

6. Agricultural Lease. The area of the leased premises under the agricultural lease identified in Section 19 of the Agreement will be reduced to reflect the new area of the premises, and this area may also have to be reduced because of environmental issues. Notwithstanding anything to the contrary set forth in the Agreement, Buyer shall be entitled to reasonably reduce the area of the leased premises to address these issues, and Buyer and Seller acknowledge and understand that Buyer shall be entitled to reasonably alter the form of the lease attached as Exhibit C to the Agreement to reflect the new area of the leased premises.

7. Appraisal. Buyer shall promptly obtain a revised appraisal of the premises that reflects the change in the land area at Buyer's sole cost and expense.

8. Municipal Approvals. The Board of Selectmen of the Town of Acton have called a Special Town Meeting for the approval of the purchase of the premises for September 28, 2010, and Buyer's obligations hereunder are contingent upon approval of the terms hereof at said Special Town Meeting. The Board of Selectmen will use diligent and good faith efforts to

pursue such approval at Special Town Meeting. If Special Town Meeting fails to approve the purchase of the premises on the new terms set forth herein, the Board of Selectmen shall be entitled to terminate the Agreement, as amended, and all deposits under the Agreement shall promptly be returned to Buyer, provided, however, that Seller shall be entitled to retain the extension payments referenced in Section 1 above.

9. Exhibits. Exhibit A of the Agreement is hereby deleted and replaced with Exhibit A attached hereto.

10. Counterparts. This Amendment may be executed by facsimile and in multiple counterparts which, when taken together, shall constitute one instrument.

11. Ratification. Except as amended hereby, (a) the Agreement shall be, and hereby is, ratified, confirmed and approved and shall remain in full force and effect in accordance with its terms and (b) Seller and Buyer restate and affirm the representations and warranties of each set forth in the Agreement. Defined terms that are not specifically defined herein shall have the meanings ascribed to them under the Agreement.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment under seal as of the date first above written.

SELLER

For Mary Ann Caouette, individually and as trustee of The Simeone Irrevocable Trust
Hereunto duly authorized

For Frances Simeone, individually and as trustee of The Simeone Irrevocable Trust
Hereunto duly authorized

For John E. Simeone, individually and as trustee of The Simeone Irrevocable Trust
Hereunto duly authorized

BUYER

Town of Acton
By its Town Manager

Steve Ledoux
Hereunto duly authorized

EXHIBIT A

Draft of Approval Not Required Plan

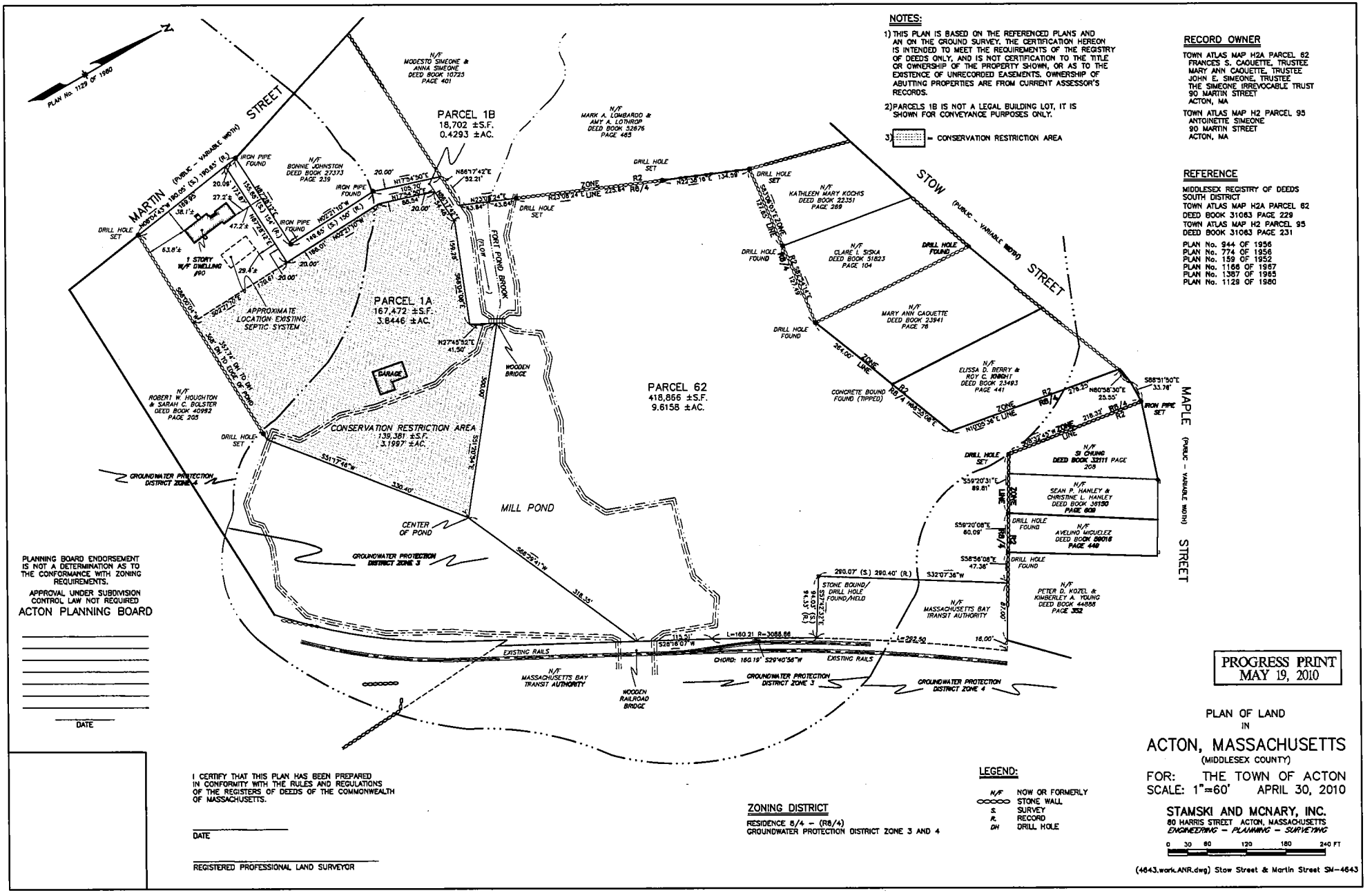
NOTES:
1) THIS PLAN IS BASED ON THE REFERENCED PLANS AND AN ON THE GROUND SURVEY. THE CERTIFICATION HEREON IS INTENDED TO MEET THE REQUIREMENTS OF THE REGISTRY OF DEEDS ONLY, AND IS NOT CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY SHOWN, OR AS TO THE EXISTENCE OF UNRECORDED EASEMENTS. OWNERSHIP OF ABUTTING PROPERTIES ARE FROM CURRENT ASSESSOR'S RECORDS.
2) PARCELS 1B IS NOT A LEGAL BUILDING LOT, IT IS SHOWN FOR CONVEYANCE PURPOSES ONLY.
3) = CONSERVATION RESTRICTION AREA
RECORD OWNER
TOWN ATLAS MAP H2A PARCEL 62
FRANCES S. CAQUETTE, TRUSTEE
MARY ANN CAQUETTE, TRUSTEE
JOHN E. SIMEONE, TRUSTEE
THE SIMEONE IRREVOCABLE TRUST
90 MARTIN STREET
ACTON, MA
TOWN ATLAS MAP H2 PARCEL 95
ANTOINETTE SIMEONE
90 MARTIN STREET
ACTON, MA
REFERENCE
MIDDLESEX REGISTRY OF DEEDS
SOUTH DISTRICT
TOWN ATLAS MAP H2A PARCEL 62
DEED BOOK 31063 PAGE 229
TOWN ATLAS MAP H2 PARCEL 95
DEED BOOK 31063 PAGE 231
PLAN No. 944 OF 1956
PLAN No. 774 OF 1956
PLAN No. 159 OF 1952
PLAN No. 1168 OF 1967
PLAN No. 1387 OF 1965
PLAN No. 1129 OF 1980
PARCEL 1B
18,702 ±S.F.
0.4293 ±AC.
PARCEL 1A
167,472 ±S.F.
3.8446 ±AC.
PARCEL 62
418,866 ±S.F.
9.6158 ±AC.
CONSERVATION RESTRICTION AREA
139,381 ±S.F.
3.1997 ±AC.
MARTIN STREET (PUBLIC - VARIABLE WIDTH)
STOW STREET (PUBLIC - VARIABLE WIDTH)
MAPLE STREET (PUBLIC - VARIABLE WIDTH)
FORT POND BROOK
MILL POND
CENTER OF POND
WOODEN BRIDGE
WOODEN RAILROAD BRIDGE
EXISTING RAILS
1 STORY W/F DWELLING #90
GARAGE
APPROXIMATE LOCATION EXISTING SEPTIC SYSTEM
GROUNDWATER PROTECTION DISTRICT ZONE 4
GROUNDWATER PROTECTION DISTRICT ZONE 3
N/F MODESTO SIMEONE & ANNA SIMEONE DEED BOOK 10725 PAGE 401
N/F BONNIE JOHNSTON DEED BOOK 27373 PAGE 239
N/F MARK A. LOMBARDO & AMY A. LOTHROP DEED BOOK 52876 PAGE 485
N/F KATHLEEN MARY KOCHS DEED BOOK 22351 PAGE 289
N/F CLARE I. SISKA DEED BOOK 51823 PAGE 104
N/F MARY ANN CAQUETTE DEED BOOK 23941 PAGE 76
N/F ELISSA D. BERRY & ROY C. KNIGHT DEED BOOK 23493 PAGE 441
N/F ROBERT W. HOUGHTON & SARAH C. BOLSTER DEED BOOK 40992 PAGE 205
N/F SI CHUNG DEED BOOK 32111 PAGE 208
N/F SEAN P. HANLEY & CHRISTINE L. HANLEY DEED BOOK 36150 PAGE 609
N/F AVELINO MIGUELEZ DEED BOOK 58018 PAGE 448
N/F PETER D. KOZEL & KIMBERLEY A. YOUNG DEED BOOK 44888 PAGE 352
N/F MASSACHUSETTS BAY TRANSIT AUTHORITY
PLANNING BOARD ENDORSEMENT IS NOT A DETERMINATION AS TO THE CONFORMANCE WITH ZONING REQUIREMENTS.
APPROVAL UNDER SUBDIVISION CONTROL LAW NOT REQUIRED
ACTON PLANNING BOARD
DATE
I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.
DATE
REGISTERED PROFESSIONAL LAND SURVEYOR
ZONING DISTRICT
RESIDENCE 6/4 - (R6/4)
GROUNDWATER PROTECTION DISTRICT ZONE 3 AND 4
LEGEND:
N/F NOW OR FORMERLY
STONE WALL
S. SURVEY
R. RECORD
DH DRILL HOLE
PROGRESS PRINT
MAY 19, 2010
PLAN OF LAND
IN
ACTON, MASSACHUSETTS
(MIDDLESEX COUNTY)
FOR: THE TOWN OF ACTON
SCALE: 1"=60' APRIL 30, 2010
STAMSKI AND MCNARY, INC.
80 HARRIS STREET ACTON, MASSACHUSETTS
ENGINEERING - PLANNING - SURVEYING
0 30 60 120 180 240 FT
(4643.work.ANR.dwg) Stow Street & Martin Street SM-4643

EXHIBIT E

Environmental Request for Proposals

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

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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

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 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

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 <u>not</u> 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 Reimburseable 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 Reimburseable 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

By: _____
Don P. Johnson, Town Manager

[Consultant]

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

	Fee for Sub-task	Fee for Task	Total Project Fee
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)			

	Fee for Sub-task	Fee for Task	Total Project Fee
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			
Task C. – Add-Alternate 1			
Task D. – Add-Alternate 2			
Task E. – Add-Alternate 3			